

AGENDA — September 12, 2001, Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 4, Security

<p>Action 1 — Consent Item(s)</p> <p>Proposed revisions to Compliance Policy and Procedures Manual Chapter 4, <i>Security</i>.</p>	<p>Adopt staff's proposed revisions as illustrated in Exhibit 2.</p> <ul style="list-style-type: none"> ▪ Increase the minimum amount of security required from \$500 to \$2,000. Security for accounts that would have required less than \$2,000 will be waived. ▪ Incorporate policy and procedural changes that have been implemented since the last revision. ▪ Incorporate information on the changes in processing work resulting from changes in technology. ▪ Incorporate non-substantive changes in grammar and format.
<p>Action 2 — Approval to Publish</p>	<p>Approve the publication of the proposed revisions to Compliance Policy and Procedures Manual Chapter 4, <i>Security</i>, as adopted in the above actions.</p> <p>Operative Date: None Implementation: Upon Board approval.</p>

AGENDA —September 12, 2001, Business Taxes Committee Meeting
Proposed Revisions to Compliance Policy and Procedures Manual Chapter 4, Security

Formal Issue Paper Number 01-026

Action Item	Staff's Proposed Language
Action 1 — Consent Item(s) Proposed revisions to Compliance Policy and Procedures Manual Chapter 4, <i>Security</i> .	Refer to Exhibit 2 for revised text.

Manual Agenda rev. 3-26-01

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Issue Paper Number 01 - 026



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed Revisions To Compliance Policy and Procedures Manual Chapter 4, Security

I. Issue

Should proposed revisions to Chapter 4, *Security*, be incorporated into the Compliance Policy and Procedures Manual?

II. Staff Recommendation

Staff recommends that the proposed revisions, illustrated in Exhibit 2, be incorporated into Chapter 4 of the Compliance Policy and Procedures Manual. Revisions proposed for the chapter include:

- Increasing the minimum amount of security required from \$500 to \$2,000. Security for accounts that would have required less than \$2,000 will be waived.
- Incorporating policy and procedural changes that have been implemented since the last revision.
- Incorporating information on the changes in processing work resulting from changes in technology.
- Incorporating non-substantive changes in grammar and format.

Staff recommends no operative date since the proposed revisions reflect current administrative policies and procedures.

III. Other Alternative(s) Considered

Make no changes to Compliance Policy and Procedures Manual Chapter 4, *Security*.

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IV. Background

The Compliance Policy and Procedures Manual (CPPM) is the State Board of Equalization's (Board) guide for compliance functions. These functions include registration, account maintenance, and collections. The nine chapters contained within the CPPM incorporate procedures and techniques that have evolved over the years and have proven to be sound and practical. Board employees are required to follow these procedures to ensure fair and uniform treatment of taxpayers.

Depending upon the tax law administered, the Board is either required or authorized to obtain security to ensure the payment of any tax liability that may later be due the State. CPPM Chapter 4, *Security*, explains when security is required or authorized and describes the acceptable forms of security. The guidelines provided in this chapter enable staff to equitably and effectively administer the use of security to protect the interest of the State, while minimizing the economic and administrative burden imposed upon the taxpayer.

Revenue and Taxation Code (RTC) section 6701 authorizes the Board to require a deposit of security from any person operating under its jurisdiction. The amount of security required by the Board shall be determined by the Board, but shall *not* exceed twice the average liability of persons required to file quarterly, or three times the average liability of persons required to file monthly. Under no circumstances may the security required by the Board exceed \$50,000. RTC section 6701 further mandates that the Board release any security after a taxpayer files timely returns and remits the proper amount of tax due for a three year period.

RTC section 6701 allows security to be provided in the form of cash, government bonds, or insured deposits in financial institutions. As a matter of policy, the Board accepts surety bonds and, in limited cases, may accept personal guaranties as a form of security.

Meetings were held with interested parties on May 17, 2001 and on July 5, 2001. Representatives from a bonding company were in attendance to discuss staff's proposal to raise the minimum amount of security required. The representatives agreed with staff's proposal to raise the minimum security to \$2,000. There were no other interested party comments on the proposed changes.

V. Staff Recommendation

A. Description of the Staff Recommendation

As illustrated in Exhibit 2, specific revisions proposed for the chapter include:

- Define a "reasonable" length of time within which a taxpayer has to post security as thirty (30) days (CPPM 405.020).
- Provide that the maximum security required is, with certain exceptions, not greater than twice the average quarterly liability or three times the average monthly liability, up to \$50,000 (CPPM 405.030).
- Raise the minimum amount of security required from \$500 to \$2,000. After calculating required security, security for accounts requiring less than \$2,000 security will be waived (CPPM 405.030).

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- Incorporate the minimum and maximum amount of security required for various special tax programs (CPPM 405.030).
- Incorporate the statutory provision that security held by the Board shall be released after a three year period in which the person has filed all returns and paid all taxes due to the State in a timely manner (CPPM 405.035).
- Clarify that when staff determines that security is to be released pursuant to the provisions of this statute, such a release will not require a written request from the taxpayer in order to be effective (CPPM 405.035).
- Clarify that it is the responsibility of the district office to establish, transfer, and release security transactions. The Account Analysis and Control Section remains responsible for correcting, terminating and approving security deposit record transactions (CPPM 405.055)
- Clarify that personal guaranties are valid until revoked in writing. In addition, language has been added to recommend that staff verify the information provided by the guarantor to ensure that a personal guaranty is valid and acceptable by staff if the security is not to be released after the three year review (CPPM 410.060).
- Delete CPPM 410.075, *Judgments Against Guarantors*, from this chapter. Add the contents as CPPM 730.060, *Judgments Against Guarantors*.
- Clarify that the cancellation of a surety bond becomes effective thirty (30) days after its receipt by the Board. In the event that a cancellation is sent to both headquarters and the field office, the earlier date will be used (CPPM 420.045).
- Incorporate guidelines for redeeming and/or converting time deposits and savings accounts held as security deposits (CPPM 435.050).
- Provide guidelines for releasing security deposits to financial institutions (CPPM 465.040).
- Provide guidelines for surety company name and ownership changes (CPPM 465.050).
- Provide guidelines for liquidation of a surety company (CPPM 465.060).

Proposed grammatical revisions are minor and intended to conform Chapter 4 to current usage. Gender specific language has been removed. Proposed revisions to terminology standardize references to the Board's district offices and update the names of headquarters units where appropriate.

B. Pros of the Staff Recommendation

Policies and procedures described in CPPM Chapter 4 will be consistent with current security policies and procedures. Proposed changes raise the minimum security deposit from \$500 to \$2,000 which will reduce the administrative and financial burden to taxpayers. In addition, staff

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productivity will increase as the security program will generate \$4.69 of revenue for every dollar spent, a substantial increase from the current \$2.79.

C. Cons of the Staff Recommendation

None.

D. Statutory or Regulatory Change

No statutory or regulatory change is required.

E. Administrative Impact

Requires notification to Board staff.

F. Fiscal Impact

1. Cost Impact

The costs of maintenance and distribution of CPPM chapters are routine and included in the Board's annual budget.

2. Revenue Impact

Revenue loss is estimated at \$609,000 per year. However, staff productivity will increase as the security program will generate \$4.69 of revenue for every dollar spent, a substantial increase from the current \$2.79. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

None. With the exception of raising the minimum security deposit to \$2,000, proposed revisions are for policies and procedures already in effect.

H. Critical Time Frames

No operative date is proposed. Upon Board approval, revised CPPM Chapter 4 will be posted on the Board's Internet website and distributed to Board staff.

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VI. Alternative 1

A. Description of the Alternative

Make no changes to Compliance Policy and Procedures Manual Chapter 4, *Security*.

B. Pros of the Alternative

None.

C. Cons of the Alternative

Policies and procedures described in CPPM Chapter 4 will not be consistent with current security policies and procedures. Minimum security deposit will remain at \$500.

D. Statutory or Regulatory Change

None.

E. Administrative Impact

Could result in inconsistencies in application of security policies.

F. Fiscal Impact

1. Cost Impact

Could result in some increase in costs due to inconsistency in policy.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Taxpayers might not be treated consistently. Security deposits for amounts between \$500 and \$2,000 will still be required.

H. Critical Time Frames

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: August 30, 2001

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



PROPOSED REVISIONS TO COMPLIANCE POLICY AND PROCEDURES MANUAL CHAPTER 4, SECURITY

Staff Recommendation

Staff recommends that the proposed revisions, illustrated in Exhibit 2, be incorporated into Chapter 4 of the Compliance Policy and Procedures Manual. Revisions proposed for the chapter include:

- Increasing the minimum amount of security required from \$500 to \$2,000. Security for accounts that would have required less than \$2,000 will be waived.
- Incorporation of policy and procedural changes that have been implemented since the last revision.
- Incorporation of information on the changes in processing work resulting from changes in technology.
- Incorporation of non-substantive changes in grammar and format.

Staff recommends no operative date since the proposed revisions reflect current administrative policies and procedures.

Alternative 1:

Make no changes to Compliance Policy and Procedures Manual Chapter 4, *Security*.

Background, Methodology, and Assumptions

Staff Recommendation:

The staff recommendation to revise Compliance Policy and Procedures Manual Chapter 4 would include raising the minimum amount of security required from \$500 to \$2,000. Security for accounts requiring less than \$2,000 security will generally be waived, not increased. This is the only revision that has a revenue effect.

Those accounts which are required to post security of less than \$2,000 do so in most part by the use of cash deposits or liquid security deposits (LSD's). During calendar year 2000, the

Board released nearly \$53 million in cash security deposits and LSD's. Of this amount, \$8.5 million was applied to taxpayer liability. The remainder was returned to the taxpayer, transferred to another account or offset by another agency. A portion of the \$8.5 million, \$1.5 million, was applied to final returns filed by the taxpayer. These amounts were applied to the final return as a convenience to the taxpayer and not because the amounts were uncollectable. Therefore, the amount that was applied against outstanding liabilities was \$7 million.

Those accounts required to post security of less than \$2,000 accounted for about \$935,000 of the \$7 million. This is the amount of cash deposits and LSD's that would be at risk if the minimum amount of security required were raised. This revenue would not necessarily be uncollected as the liabilities against which these deposits would be applied would remain subject to normal collection activities. Currently, the Board collects 37% of past due liabilities. If this percentage holds for the amounts identified above, then the Board through normal collection procedures will collect \$345,000 of the \$935,000 leaving \$590,000 uncollectable.

In addition to the amount specified above, there was \$19,000 that the Board collected from sureties during 2000 on accounts required to post security of less than \$2,000. Since demands are only made on sureties after it has been determined that the amounts are uncollectable from the taxpayer, the \$19,000 in revenue would not be collected if the security was not required.

Alternative 1:

Alternative 1 has no revenue effect.

Revenue Summary

Staff Recommendation:

The staff recommendation could conceivably result in the loss of \$609,000 annually.

Alternative 1:

Alternative 1 has no revenue effect.

Preparation

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of August 27, 2001

Compliance Policy and Procedures Manual

Chapter 4

Security



Sales and Use Tax Department
California State
Board of Equalization

This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda.

Please contact any board office if there are concerns regarding any section of this publication.

SECURITY

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CHAPTER IV

SECURITY 400.000**GENERAL STATEMENT ON SECURITY 405.000****POLICY 405.005**

~~Dependent upon the~~ For each tax law program administered, the Board is either required, or authorized, to obtain security, within certain limitations, to ensure payment of any tax that might become due or delinquent. When security is deemed necessary, minimum security of ~~\$500~~2,000 has been set by Board policy for sales and use tax accounts, and the maximum is set by law. The maximum for sales and use tax accounts is determined for each account by using the “estimated average tax liability” and may not exceed \$50,000.

The security provisions, particularly under sales tax laws where security is not mandatory, must be judiciously administered. Unusual or excessive demands will not be made. (See CPPM §405.020 for security deposit policy for new accounts.)

SECURITY AUTHORIZED 405.015

As specified by Revenue and Taxation Code (RTC) section 6701, ~~t~~The Board is authorized to require security when deemed necessary ~~under the Sales and Use Tax Law.~~

~~Reference Sales and Use Tax Law §6701~~

All relevant factors must be considered in setting the amount of security, and care must be taken to be sure that demands do not exceed the limits set by law.

SECURITY - NEW ACCOUNTS/NEW OWNERS 405.020

Initial security will not be required from applicant~~s~~ for seller's permits (excluding corporations), except when the applicant has previously established a ~~“record”~~history² with the Board of multiple late payments, dishonored checks, partial or no remittance returns or similar problems.

Non-Corporate Owners

If the owner(s) of the business (sole proprietor, partnership, joint venture, fraternal associations, etc.) does not have a ~~previous “poor record”~~history of payment problems with the Board, no initial demand for security will be made. The applicant will, however, in every instance, be advised that failure to meet the requirements of correct and timely payment and reporting may result in security being demanded to the maximum allowed by law, and ~~that the~~ failure to place security when demanded will result in revocation of the seller's permit.

Corporations

In regard to corporate ownership, including Limited Liability Companies (LLCs), security will generally be required unless the corporation has sufficient interest in real property in this State to obviate that necessity; or facts and circumstances encountered ~~may do~~ not warrant the requirement of security for a corporation. Security should ~~never~~ only be imposed ~~as a punitive measure~~when warranted based upon the facts and circumstances.

~~Experience has shown that losses on corporation accounts are considerably higher than for other types of business entities. Therefore, when registering corporations, security will generally be required except when the corporation has sufficient equity in real property in this State, or other mitigating facts make security unnecessary.~~

SECURITY - NEW ACCOUNTS/NEW OWNERS**(cont.) 405.020****General Guidelines**

In determining whether or not security is necessary to protect the interests of the State, consideration should be given to such factors as:

1. The applicant's ~~past experience~~ payment history, if any, with the Board. If the applicant has held prior permits, his or her prior ~~poor record~~ history may very well indicate the future ~~record~~ actions. A poor ~~record~~ payment history includes such acts as multiple late payments, dishonored ~~checks~~ checks, and EFT non-payments not resolved by a ~~Section~~ section 6592 or 6593 request, partial or no remittance returns, revocations ~~and or~~ fraud assessments.
2. Type of ownership - ~~—~~ Sole proprietor and partnerships consisting of individuals are generally a lower risk than other types of ownership. ~~Corporations are a higher risk than others.~~ Any decision to either conditionally waive or release security for a ~~corporation~~ other entities should be weighed carefully with appropriate weight given to the State's interest, balanced with sound public policy, good judgment, and the specific facts and history of the taxpayer.
3. A corporation's financial condition. If the corporation owns real estate in which there is sufficient equity to secure future tax obligations, security may be waived. A recent financial statement will be of assistance.
4. History ~~Record of~~ the individual forming a new closely held corporation. If the individual forming the closely held corporation has established a prior good ~~record~~ payment history with the Board, then the security may be waived.

The list is not meant to be all-inclusive, but should be useful in implementing the Board's security policy.

BOE-1009, Notification of Conditional Security ~~requirement~~ Requirement

The applicant will, in every instance, be advised that failure to meet the requirements of correct and timely payment and reporting may result in security being required to the maximum allowed by law. Form BOE-1009, Notification of Conditional Security Requirement, ~~will be prepared in duplicate and signed by a Board of Equalization employee the taxpayer in every case when security is waived at the time of the original application. The signed original is sent to Headquarters Taxpayer Records Section, and the copy will be given to the taxpayer and a notation made on the on-line registration system.~~

Issuance of Permit When Security is Required

Issuance of the permit will not be delayed merely to obtain security. ~~If the required security cannot be placed at the time of application, an agreement should be reached with the applicant establishing a~~ reasonable length of time in which to post the required security should be given (30 days recommended). A security deposit may be made in installments. See CPPM 410.010.

Revocation for Failure to Post Security

Should the taxpayer fail to post the required security ~~per an established agreement~~, the account should be scheduled for revocation. (Refer to CPPM ~~Section 360~~ 340.000 et. seq. for policy and procedure in citing an account for failure to post security.)

MAXIMUM AND MINIMUM SECURITY POLICY

405.030

Generally, when security is necessary, it should be required in the maximum allowable under the law. However, when security is required on a prepayment account, it should not exceed one quarter's estimated tax liability. A person on a prepayment status who, pursuant to Section 6070, has been cited or revoked may be required to post security not to exceed twice the average quarterly tax liability.

The existence of a liquor license, in itself, should not cause reduced security demands, since other State agencies and the Internal Revenue are permitted to file claims against, or seize and sell, liquor licenses to satisfy delinquent taxes. (IRS claims against the liquor license are not superior to the Board even though they may seize and sell the license.) The value of the license should be considered with other fixed assets.

Security should not be taken for purposes of security statistics. A minimum security policy of \$500 has been established by the Board. Therefore, if it is decided that security should be posted, an amount less than \$500 should not be requested unless in the judgment of the district administrator, some smaller amount is necessary because of unusual circumstances. Form BT 1009 should be signed by the owner or authorized representative of those businesses where security is being waived.

A statement of assets and liabilities or a balance sheet should be taken to help determine whether security is necessary. When examining these statements relevant to making security decisions, it is necessary to determine if Financial Statements filed under the uniform Commercial Code have encumbered the business assets so as to render them of little value as security.

The current maximum security for sales and use tax is \$50,000 pursuant to RTC section 6701. You should also keep in mind that the Board's lien laws have no defense against after filed Purchase Money Security interests (financing statements). See Subsection 760.080. Except as noted below, the maximum amount of security for persons filing returns for quarterly periods is twice the estimated average quarterly liability, or for persons required to file monthly returns, the maximum amount of security is three times the estimated average liability. The maximum amount of security for a person who has been given a notice of hearing pursuant to section 6070 to show cause why his or her permit should not be revoked, or a person whose permit has been revoked, is three times the average quarterly liability or five times the average monthly liability.

Per Board policy, the amount of security for prepayment accounts is one quarter's estimated tax liability. Board policy states that the maximum amount of security for a prepayment account which has been given a notice of hearing to show cause why the permit should not be revoked or for a person whose permit has been revoked is twice the average quarterly liability.

The Board has established a minimum security policy of \$2,000 for sales and use tax accounts. Therefore, if the amount of security required is computed to be less than \$2,000, security should generally be waived. Security amounts less than \$2,000 should be requested in rare instances and only with the prior approval of the District Administrator.

The following table summarizes the applicable minimum and maximum security required for taxes and fees administered by the Board other than sales and use taxes.

COMPLIANCE POLICY AND PROCEDURE MANUAL

<u>Tax/Fee Program</u>	<u>RTC</u>	<u>Min. Security</u>	<u>Max. Security</u>	<u>How Calculated</u>
<u>Fuel Taxes Division</u>				
<u>Motor Vehicle Fuel Tax</u>	<u>7486</u>	<u>\$500</u>	<u>See Note 1</u>	<u>3 x monthly tax liability</u>
<u>Use Fuel Tax</u>	<u>8951</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Diesel Fuel Tax</u>	<u>60401</u>	<u>\$500</u>	<u>See Note 1</u>	<u>3 x monthly tax liability</u>
<u>Underground Storage Tank Fee</u>	<u>50108.2</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Oil Spill Fees</u>	<u>46401</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Childhood Lead Fee</u>	<u>43102</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Environmental Fees Division</u>				
<u>Disposal Fee</u>	<u>43102</u>	<u>\$1,000</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Generator Fee</u>	<u>43102</u>	<u>\$1,000</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Facility Fee</u>	<u>43102</u>	<u>\$1,000</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Environmental Fee</u>	<u>43102</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Occupational Lead Fee</u>	<u>43102</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Ballast Water Management Fee</u>	<u>55022</u>	<u>\$1,000</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Excise Taxes Division</u>				
<u>Cigarette and Tobacco Products Tax</u>	<u>30142</u>	<u>\$1,000</u>	<u>None</u>	<u>See Note 2</u>
<u>Alcoholic Beverage Tax</u>	<u>32103</u>	<u>\$500</u>	<u>None</u>	<u>See Note 3</u>
<u>Insurance Tax</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>No security authorized</u>
<u>Integrated Waste Management Fee</u>	<u>45102</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Energy Resources Surcharge</u>	<u>40036</u>	<u>\$500</u>	<u>None</u>	<u>2 x quarterly tax liability</u>
<u>Emergency Telephone Surcharge</u>	<u>41041</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Natural Gas Surcharge</u>	<u>55022</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>
<u>Tire Recycling Fee</u>	<u>55022</u>	<u>\$500</u>	<u>None</u>	<u>3 x monthly tax liability</u>

Note 1: The amount of security shall not be more than three times the estimated average monthly tax liability, however, the total amount of security shall not be in excess of \$1,000,000 where the person has established to the satisfaction of the Board that it has equity in real property to which a lien imposed by either Section 7872 or Section 60445 would attach.

Note 2: If a distributor desires to defer payments for stamps or meter register settings, the Board shall require a security deposit equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the Board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

Note 3: The maximum amount will be not more than twice the taxpayer's estimated monthly tax for taxpayers reporting monthly, or not more than twice the taxpayer's estimated tax for the tax reporting period for taxpayers reporting for periods longer than one month.

SECURITY

~~When determining the maximum amount of security through the use of previously filed returns and the formulas shown in the security sections of the law, "estimated average tax liability" is used. This liability includes tax, interest, and penalty.~~

RELEASE AND REFUND OF SECURITY - ACTIVE ACCOUNTS

405.035

~~Except in those cases where security is mandatory under the law, it is the policy of the Board to refund security when the business has been operating for a period of three consecutive years and the taxpayer's payment record, financial condition and current audit status indicate security is not necessary. Refunds and releases of security should be made when these conditions are met. Form letters, signed by the Board Members, are available and will be used to transmit the refunded or released security. Caution should be exercised when considering a refund of security posted by a corporation. See reasons cited in Subsection 405.020. § RTC section 6701, effective January 1, 1997, states in part:~~

"Security held by the Board shall be released after a three-year period in which the person has filed all returns and paid all tax to the State or any amount of tax required to be collected and paid to the State within the time required."

The above includes all types of ownership. Security held by the Board for three years shall be released in a timely manner if the taxpayer meets the provisions of section 6701.

As part of the security review process for accounts with a three-year good record, the release (termination) of guaranties and surety bonds may now be initiated by the Board with an immediate effective date. In cases where the Board initiates a release of security, the release of security is not contingent upon receipt of a written request received by the taxpayer.

However, this change does not affect the law and current policy and procedure for guarantors and bonding companies that wish to terminate a guaranty or surety bond. Guarantors and sureties must notify the Board, in writing, of the intention to terminate the guaranty or surety bond. The cancellation is effective 30 days from receipt of the request.

Lists of accounts with security posted for three years, which appear to meet the criteria for refunding, are produced from the Security System each year in April and October. The refunding and releasing of security should be handled timely.

Personal guaranty and surety bond cancellations that are Board initiated should be marked (i.e. highlighter, red line, circle, or checkmark) on a copy of the three-year list. For each of the marked accounts, the requirement listed on the Security System must be ended. This is done by ending the security on-line by entering an "E" in the action field on the SEC RQ screen. The taxpayer should then be notified of the cancellation by sending a Form BOE-168-B or BOE-168-C. The marked list and a memorandum signed by the District Principal Compliance Supervisor or District Administrator must be sent to the Account Analysis and Control Section, MIC: 29 to cancel the security record.

When the list is received by the Account Analysis and Control Section, staff will update the cancellation information on the Security System. Only accounts marked will be canceled. The effective date of cancellation will be the date of the memorandum.

INCREASING SECURITY REQUIREMENTS

405.040

~~It is the policy of the Board not to increase security unless the increase is definitely necessary for the protection of the State's interest. The amount of security required at the time the application is filed should not be increased merely because the amount of tax later reported is greater than originally anticipated. To increase security on this basis alone would penalize the person who is successful in business. However, in~~ some instances, a reasonably accurate estimate cannot be made at the time of application, and it is necessary to re-examine the security requirements after the business has operated for several months. In such cases, the applicant must be made aware that security requirements are subject to a later review. After review, the security should then be properly adjusted either upward or downward. This procedure should be necessary only in a limited number of cases. Where

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applicants have ~~knowingly made false statements~~ extremely conservative estimates relating to sales volume to minimize the amount of security, the amount may be increased without delay.

When a taxpayer files a "no remittance" return, submits a dishonored check, or presents any collection problem, the adequacy of security should be reviewed. If it is found that security is not the maximum permitted under the law and it is determined that additional security should be posted; the additional amount should be demanded. (See CPPM Subsection 405.030).

If, after giving the person notification of the additional amount required, security ~~it~~ is not posted within a reasonable period of time, the taxpayer should be cited for revocation of the permit for failure to post security. - See (See CPPM Section 360.000 et. seq.) ~~for procedure~~

SECURITY UNDER THE BANKRUPTCY CODE

405.043

Trustees or debtors who ~~operated~~ operate businesses after the debtor has filed for protection under the Bankruptcy Code are required to conduct the operation according to the laws of the ~~state~~ State in which they operate the business. A person's filing for protection under the Bankruptcy Code is not a basis for increasing or demanding security. Any security on deposit should remain on deposit. ~~After the automatic stay is terminated, the Board~~ The Board may increase security under appropriate circumstances as provided in CPPM Subsection 405.040.

SECURITY ADJUSTMENTS AND CHANGE OF REPORTING BASIS

405.045

~~When extending the reporting interval of an account, demand should not be made for additional security except for reasons other than the reporting basis change. Additional security should not be demanded when changing a sales tax account from a monthly to a quarterly reporting basis because of prepayment requirements.~~

~~If the reporting basis is to be shortened, demand for additional security may be made if the change was caused by the unsatisfactory record of the taxpayer. No demand will be made if the reporting interval is being shortened because the amount of tax being reported exceeds limitations set by the standards of CPPM Subsection 405.0730 and no other factors are present to support demand for additional security.~~

Additional security is not required when the reporting interval of an account (reporting basis) is shortened or extended, unless the change is necessary to address an unsatisfactory reporting or payment record of the taxpayer.

DISTRICT RESPONSIBILITY FOR SECURITY

405.050

The district is responsible for determining the amount of security required of the taxpayer and has full control over the establishment of the security account, the preparation of security receipt advice documents, and the preparation of forms to correct, transfer, release or terminate a security account record.

Each district will maintain a ~~"Liquid Security on Deposit"~~ "Cash/Liquid Security Deposit Advice" file that will contain a copy of each Form BOE-487-C, Cash/Liquid Security Deposit Advice, with corresponding certificates attached. The file will be kept in terminal digit order. Security measures in accordance with policy established for controlled forms ~~as per CPPM Section 815.020~~ will be taken to ensure safekeeping of these files.

Cash security is refunded by the district office. Each office has an allotted number of Board checks. These checks are written for both refunds to the taxpayer and for releases to the Board for payment of liabilities. Each check is reconciled by the Accounting Section to verify the check numbers issued by the district. If cash security is released in error, the district must recover the funds and re-deposit them into the security deposit bank account.

HEADQUARTERS RESPONSIBILITY - SECURITY

405.055

Account Analysis and Control Section

The district office is responsible for establishing, transferring and releasing security transactions while the Account Analysis and Control Section is responsible for overseeing the processes of ~~establishing, correcting, transferring,~~

SECURITY

releasing, terminating and approving security deposit record transactions. Periodic security inventory listings and other pertinent data are produced from the information in the system, ~~as the need is established~~, for both the district offices and Headquarters.

Accounting Section

The Accounting Section is responsible for the Security Trust Fund accounting and preparation of financial statements for submission to control agencies. It Accounting Section is also responsible for the bank account maintained for the exclusive use of Security Trust deposits and disbursements, including. ~~The Accounting Section issues~~ issuing the blank check stock to district offices and ~~oversees~~ overseeing the blank check stock accountability.

The Accounting Section reconciles the security processed by the Account Analysis and Control Section to the actual cash received, as reported by the Cashier Unit. All security transactions are recorded to reflect the Board's liability for the security collected from taxpayers or refunded to taxpayers. The liability is specific to the type of security collected, i.e. time certificates, cash, etc. Financial statements are prepared to reflect the status of this fund.

The Accounting Section is solely responsible for issuing replacement (in-lieu) checks to taxpayers whenever the original checks are lost (~~Operations Memo No. 782~~). Whenever checks are returned, the Accounting Section determines its disposition when disposition to the Unclaimed Trust Fund is warranted.

Cashier Unit

~~The Cashier Unit balances the daily cash to ensure all deposits for that day have been recorded properly. The unit is also responsible for processing the dishonored check items.~~

~~SALES AND USE TAX SECURITY - AMOUNTS~~

~~405.070~~

~~Security for sales tax accounts will be set in accordance with Section 6701, Revenue and Taxation Code~~

UNIFORM SECURITY - SUBSIDIARY CORPORATIONS AND FRANCHISED OUTLETS

405.075

No action will be initiated by any district or branch ~~subdistrict~~ office to establish a uniform statewide security policy for subsidiary corporations or franchisees unless a request is received from the parent corporation or the district office determines that inequities in the treatment of the taxpayer exist.

When such cases are discovered, they should be referred to the district in which the home office is located or to the district ~~in which there is situated~~ where the person with authority to act on behalf of the parent corporation is located. That district will ~~then make such investigation~~ investigate ~~as may be necessary in order to make an and decide the~~ appropriate ~~decision regarding~~ security requirements.

The decision made by the district of control will represent the Board's policy in connection with the overall operations of the subsidiaries or franchisees, ~~and all district will adhere to the policy~~. If it is decided that all subsidiaries or franchisees shall be required to post security, then security in an amount provided for in ~~Section 6701 of the Revenue and Taxation Code~~ RTC section 6701 will be required by any district in which an application is filed. If the district of control concludes that the parent corporation is to be allowed to guarantee guaranty the tax of its subsidiaries or franchisees, then each district in which an application is filed will accept the guaranty of the parent corporation. The guaranty should contain a penal sum conforming to the guidelines of ~~Section~~ RTC section 6701, but not less than \$5,000 ~~since it is not cost productive for the Attorney General to litigate for smaller amounts.~~ The penal sum of a bond is the maximum amount specified in the bond for which a surety can be held liable.

Determination of Acceptability

~~The franchisor or parent corporation should have the financial ability to back up outstanding guaranties. This should be determined by the district of control of the franchisor or parent corporation by a careful analysis of the financial statement condition.~~

By careful analysis of their financial documents, the district office of control should determine the franchisor's or parent corporation's ability to satisfy its outstanding guaranties.

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District Office Procedure

The district issuing the seller's permit will verify the acceptability of a parent corporation or franchisor's guaranty by contacting the district of control. It will be the responsibility of the controlling district to keep their files current and to notify the parent corporation or franchisor when the Board will no longer accept it as a guarantor for their subsidiaries or franchisees.

TYPES OF SECURITY**410.000****TAXPAYER'S CHOICE OF SECURITY****410.005**

When security is required, the applicant is given a copy of Form BOE-~~598~~[598-LZ](#), Notice of Security Requirements, and allowed to select the type of security he ~~or~~ she prefers. **Under no circumstances will the taxpayer be referred to a specific bank, saving and loan association, credit union, or bonding agent which may provide the security.**

Form BOE-~~598~~[598-LZ](#), Notice of Security Requirements, is automatically ~~a three-page notice automatically printed completed~~ by the on-line security system when the requirement is added, and is used to notify the taxpayer that initial security; and additional security or replacement security is required. A copy is retained by the district office and used as a follow-up system and reminder to cite the account, ~~through the on-line delinquency system~~, when security is not posted.

Subject to specific conditions, ~~five~~six ~~kind~~types of security are acceptable for purposes of fully complying with the security requirements of the Board. These are:

~~a. Cash Deposits~~

~~b. Time Certificates of Deposit~~

~~c. Savings and Loan Insured Accounts, Including Fully Paid Investment, Bonus Investment Certificates and Accumulative Investment Certificates~~

~~d. State and Federal Credit Union Shares~~

~~e. Surety Bonds~~

~~f. Guaranties (For sales and use tax and use fuel tax)~~

1. [Cash Deposits](#)
2. [Deposit accounts in banks, savings banks, and savings and loans including Insured Accounts, Fully Paid Investment, Bonus Investment Certificates and Accumulative Investment Certificates](#)
3. [State and Federal Credit Union Shares](#)
4. [Surety Bonds](#)
5. [Guaranties](#)

There are two "types" of deposits ~~which~~ that indicate why the security is taken and under what conditions it is to be refunded.

1. **Regular** - A continuing deposit which may be any one of the acceptable kinds of security to cover any one of the tax programs. This is the normal security deposit posted by the taxpayer to ensure payment of tax liability. After the account has closed out, this type of deposit is applied to any unpaid liability or released to the depositor.
2. **3rd Party** - A deposit made by a "third party" such as a finance company, dealer or some person other than the taxpayer to obtain a tax clearance. The deposit is refunded to the person who made the deposit when the tax is determined and payment made by the taxpayer or when the deposit is made for an offer in compromise and the offer is not accepted. If collection cannot be made from the taxpayer, the deposit will be applied to amounts due to the date of deposit. For instructions on application of Third Party Deposits, see [CPPM Sections 410.080 and 460.430](#). ~~000 of the manual.~~

CASH DEPOSITS - TAXPAYER'S CHOICE**410.010**

Cash deposits may be made by cash, money order, cashier's check, check, or personal check and may, ~~at the discretion of the administrator,~~ be accepted in installments (see On-Line Security User Manual pages 1-6). When the taxpayer is unable to post the full amount, the installment arrangement should generally not extend over ninety (90) days, ~~with the first payment made at the time the application for permit or license is filed.~~ Normally, ~~Cash~~ is not considered available for application to liability until the date of closeout, or until security is no longer required. If a cash deposit is to be released ~~with~~ while the account is still active, and is to be applied entirely or partially to any liability, it is considered available as of the date the Board determines it is no longer needed. Cash deposits do not earn interest as these funds are held by the Office of the State Treasurer, who lacks the statutory authority to pay interest on deposit. A cash deposit posted by personal check cannot be refunded until sufficient time has elapsed to allow for clearance of the check by the bank.

TIME CERTIFICATES OF DEPOSIT ACCOUNTS**410.015**

To be accepted as security, ~~time certificates of deposit~~ accounts in banks, savings banks, and savings and loans that are submitted as security and savings time deposit agreements must:

1. Be issued by a bank insured by the Federal Deposit Insurance Corporation.
2. ~~Be made payable to the order of~~ Have the State Board of Equalization as the account holder (for example: State Board of Equalization, F.B.O depositors name).
3. Must be automatically renewable at the date of maturity and may include a right of cancellation clause.
4. Have ~~The certificate should state that~~ any interest earned ~~shall be paid to the depositor, not to the Board of Equalization.~~

~~As a general rule, time certificates of deposit~~ accounts will only ~~should not be accepted from branches located in California out of state banks.~~ Taxpayers should not be ~~required~~ encouraged to post a time certificate of deposit in an amount less than \$500 2,000, except for installments in amounts less than \$500 2,000.

The name of the depositor on the deposit account ~~certificate~~ should agree with that of the taxpayer(s) on the application (not the firm name). An exception may be made in rare instances, such as husband and wife situations or partnerships, but in no case should a certificate, or other original evidence of deposit, be taken naming as the sole depositor a person who is not an owner, partner, or wife or husband of the owner. However, it may also include DBA's, or names of others having an interest in the security as a protection of their interests.

Financial Institution Acknowledgement

The Board will request authorized representatives of savings institutions to complete the acknowledgement portion of the second page of Form BOE-598-LZ. The acknowledgement portion shows that the savings institution understands its liability for funds transferred or released without a Board release endorsement. The signed acknowledgement is to be kept with the original evidence of deposit in a Board district office.

Waiver of Early Withdrawal Penalty

The Board will request authorized representatives of savings institutions to agree to waive the early withdrawal penalty agreement and complete the agreement portion of the second page of Form BOE-598-LZ.

SURETY BONDS**410.025**

These are bonds executed by the taxpayer as principal and issued by a surety corporation that is authorized to conduct business in this State. Surety bonds have an effective starting date and the surety has no liability for amounts incurred prior to that date. A surety can be held liable only for that amount which is measured by transactions occurring during the period the bond was in effect.

Surety bond forms ~~may~~ must be signed by the principal (i.e., an individual, a member of a partnership, or if a corporation, an officer for on behalf of the corporation, or one of the managing members for an LLC, one of the general partners for an LLP, the trustee for an Unincorporated Business Trust), ~~and also~~ or signed by an attorney-in-fact.

Taxpayer Named on Surety Bond

Surety bonds **must** be written indicating the name of the principal substantially as shown on the permit or license.

In this regard, if an individual or partnership account, the first name, an initial or initials are acceptable, provided the surname or surnames are correct. Initials only, however, with certain common names, i.e., Smith, Jones, Johnson, may pose an identification problem in the Account Analysis and Control Section when the surety bond is received directly with no identifying account number. Districts may be asked to assist in the identification of such bonds if the need arises. All names, in the case of partnerships, must be shown.

If a limited partnership, the names of the general partners and the name of the limited partnership will be shown.

The firm name and business address **will not** be shown.

Surety Bond Termination and Principal Sum Reduction Riders

Surety terminations are directed to the Board by surety companies in writing and they must be signed by the attorney-in-fact. Notices received from insurance agents are not effective acceptable, as these must be authorized by the insurance company to be effective. Properly executed termination notices become effective thirty (30) days after receipt by the Board. The penal sum of any bond, which is the maximum amount specified in the bond for which a surety can be held liable, can be changed only by a rider executed by the surety. A rider decreasing the principal sum of the bond becomes effective thirty (30) days after its receipt by the Board.

Successor's Liability

Unlike other types of security, a surety can never be held liable for an amount of sales or use tax due from its principal under successor's liability.

Surety Bond Exoneration

Requests from surety or taxpayers for the exoneration of a bond will involve a cooperative effort on the part of the ~~field~~ District, the Account Analysis and Control Section, and the Special Procedures Section.

Surety bond exoneration requests, which accompany payments from surety companies as a result of a demand on a surety bond, will be processed by the Special Procedures Section. The Special Procedures Section retains responsibility for notification to surety, demands on bonds and other activity with respect to collection from surety.

~~Requests for exoneration received in Headquarters will be directed to the Account Analysis Section for an alpha search only. The Account Analysis Section will forward the request to the field for action. The district of control is responsible for all surety bond exoneration. Before exoneration can be granted, a review must be made to confirm there are no accounts receivable or delinquent returns and no current or future audit activity is planned for the period in which the bond was in effect.~~ Surety bond exoneration requests received in Headquarters will be sent to the Account Analysis and Control Section for an account number search only. When the district of control has been established, the request will be forwarded to that district for action. District offices may also receive requests directly from surety companies. The district office must confirm that there are no accounts receivable or delinquent periods and no current or future audit activity is planned for the period in which the bond is in effect. Unilateral exoneration for surety bonds appearing on three-year security release lists may be processed after the preceding review is completed. (See CPPM 405.035)

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The district will enter exoneration information into the on-line Security system. If the exoneration is approved by the district, Form BOE 1152-LZ will be printed and mailed to the surety company. If the exoneration is denied, Form BOE 322-LZ will be printed and mailed to the surety company. The system will require an on-line comment for either of the preceding two actions.

~~Districts are reminded that once a bond is exonerated it is no longer available for demand. When considering a bond exoneration, the potential for audit recovery for the bond period should be considered and accounts receivable and delinquency should be checked.~~

SURETY BOND TRANSFERS

410.026

Occasionally ~~From time to time~~, riders or endorsements are received from sureties that would transfer a bond from one entity to another. This usually occurs when a partner is being added or dropped. ~~It is reasonable in the mind of the surviving taxpayer that the bond be transferred since a premium has been earned and surety does not make an additional charge for this courtesy. If a new bond were issued to the new taxpayer, then another full annual premium would be required, adding to the taxpayer's expense of doing business.~~

Such riders or endorsements transferring the bond from one entity to another are not acceptable if the predecessor is delinquent in reporting or paying or there is the potential for an ~~audit~~ audit-generated liability ~~on his part~~. The bond is issued for a specific penal sum and should demand be made for predecessor's liability, the penal sum available for security under the successor's amount is reduced by the amount demanded on account of the predecessor.

When a district elects to accept a rider or endorsement transferring a bond from one account to another, it will provide a statement to the effect that the predecessor's account is clear and no audit-generated liability will be incurred. The statement will be signed by the District Principal Compliance Supervisor.

SAVINGS AND LOAN INSURED ACCOUNTS

410.030

~~A savings and loan Certificate is evidence that the person named therein has deposited the specific amount of cash with a savings and loan institution. To be accepted as security for the payment of tax, the account must be with an institution having offices located within this State and whose deposits are Federally insured. The certificate must be delivered to the Board with an executed assignment form assigning the deposit to the Board. These forms are furnished by the Savings Loan Association. Taxpayers should not be encouraged to post savings and loan insured accounts in an amount less than \$500.~~

There are various types of savings and loan insured accounts that the Board will accept as security. The three types of insured accounts most widely accepted are the fully paid investment certificate, accumulative investment certificate, and the bonus certificate. Fully paid investment certificates are issued for \$100 only or multiples thereof. The savings and loan institution is required to pay directly to the depositor the interest that accrues on the funds on deposit.

Accumulative investment certificates are issued for any amount and are not restricted to multiples of \$100. The interest that accrues on these deposits is credited to the account and is paid to the depositor upon request and as a withdrawal. The passbook, savercard or passcard is not relinquished by the Board to either the taxpayer or the association for purposes of posting interest accruals, interest withdrawals, or posting increases to the amount of the insured account. If the amount of the insured account is to be increased, the taxpayer will furnish the Board with a deposit receipt in the amount of the increase and a new assignment form in the new total amount of the account. The deposit receipt will be held with the account passbook until such time as the insured account has been cashed or reassigned to the taxpayer.

If nothing is owing when an insured account is to be released, the Board's interest in the funds on deposit is assigned back to the taxpayer. If, however, there is a liability owing, the evidence of the account (certificate, or deposit receipt and/or passbook, savercard or passcard) must then be sent to the savings and loan institution to be cashed. The savings and loan institution will then forward a check payable to the Board for the proper amount.

SECURITY - LEGAL PROBLEMS**410.031**

~~In a few cases, when cashing bonus type investment certificates, the interest penalty provision is applied in accordance with the regulations issued by the Federal Home Loan Bank Board and the Federal Reserve Board resulting in the Board receiving less than the principal amount of the certificates.~~

~~To alleviate this problem, an arrangement was made in August 1973 with the California Savings and Loan League to notify all their members their depositors must agree to allow enough of the earned interest to accumulate in the account to cover any possible interest penalty when the certificates are cashed before maturity. They have complied with this request.~~

~~The field office staff should remind local financial institutions of this requirement as the need arises.~~

~~Situations may also arise as a result of an institution refusing or delaying requests to cash certificates, or refunding balances due depositors.~~

~~Where these situations are encountered and it appears the issues may be legal in nature, it is recommended referral be made to the office of the Compliance Program Manager. This office maintains working relationships with the California Bankers Association and California Savings and Loan League.~~

ASSIGNMENT OF CERTIFICATE TO BOARD, FORM ~~BT~~BOE-597 (Form #1)**410.032**

The assignment Form ~~BT~~BOE-597 (Form #1) is furnished by the Savings and Loan Association, not by offices of the Board. However, copies may be obtained from the Supply Unit. An applicant who elects to purchase an investment certificate is instructed to contact an insured savings and loan association of his/her choice, where he/she will purchase the certificate and complete an assignment form. The certificate and the original and two copies of the assignment form are delivered to the Board office. The third copy is retained by the association so immediate effect can be given to the assignment. An authorized Board representative accepts the certificate and assignment, and signs the "Receipt for Certificate and Direction to Pay Earnings." The original copy of the assignment and one copy of the Form BOE-487-C, Cash/Liquid Security Deposit Advice, are attached to the certificate. These are filed in the district "Liquid ~~S~~ecurity" file. The first copy is returned to the issuing association and the second copy given to the applicant.

STATE AND FEDERAL CREDIT UNION SHARES**410.035**

State and federal credit union shares may be accepted as security for the various ~~sales~~ tax programs administered by the Board. Any questions on the acceptability of a particular credit union should be referred to the Account Analysis and Control Section.

Deposits are insured to a maximum of \$100,000 by either the National Credit Union Administration, an agency of the U.S. government, or the California Credit Union Share Guaranty Corporation, an entity administered by the California Department ~~or of~~ Corporations.

The California Credit Union League will print and provide the assignment Form BOE-597-CU to their members. They are also providing instructions to their members on this procedure.

~~Taxpayers should not be encouraged to post this type of security in an amount less than \$500.~~

If nothing is owed when the account is to be released, the Board's interest in the funds will be assigned back to the taxpayer. If there is a liability ~~owing~~, evidence of the account, or a copy of the assignment, will be sent to the credit union. The credit union will then forward a check payable to the Board for the amount requested.

ASSIGNMENT OF STATE AND FEDERAL CREDIT UNION SHARES TO BOARD**410.036**

As with Savings and Loan Associations, the assignment Form ~~BT~~BOE-597-CU will be furnished by the credit unions, not by offices of the Board. The applicant should be instructed to contact the credit union of his or her

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choice to initiate the assignment of the credit union shares to the Board. The completed assignment form and two copies are then delivered to the Board office. If possible, some additional evidence of the account (i.e., passbook, I.D. cards, etc.) should accompany the assignment. However, the completed assignment form will be sufficient documentation to approve and to process the security. The third copy of the assignment form is retained by the credit union. The same procedures are then followed as with the assignment of savings and loan certificates (Form BOE-487-C).

THRIFT AND LOAN ASSOCIATIONS

410.037

Thrift and loan associations are chartered by the Department of Corporations and are federally insured. However, these institutions do not meet all of the requirements of the Board and merger tracking information is not published or readily available. ~~Therefore,~~ security deposits issued by thrift and loan associations **are not acceptable** to the Board.

GUARANTIES

410.040

Guaranties, ~~Form BOE 140, as~~ are a form of security under the Sales and Use Tax Law, ~~are effective collection aids and their acceptance by all districts should be~~ and subject to uniform guidelines.

Before accepting any guaranty, information should be obtained regarding the prospective guarantor's financial condition, past record and general stability. Non-liquid assets, such as ownership of real property, are required for approval of a guaranty.

WHEN TO ACCEPT GUARANTIES

410.045

In general, guaranties should be used only in the case of small, closely held corporations. They should not be accepted regularly from this type of entity in preference to other forms of security. Neither should they be accepted merely as an expedient method to overcome the taxpayer's reluctance to post other forms of security. Guaranties from officers of corporations who live out-of-state should not be accepted unless their financial statements show adequate assets within the State. The penal sum of the guaranty will be included with other security in complying with the maximum limits allowed by ~~Revenue and Taxation Code~~ RTC section ~~Section~~ 6701. Guaranties for less than \$5,000 should not be accepted.

WHO MAY GUARANTEE GUARANTY

410.050

Subject to the guidelines set forth in ~~Subsection~~ CPPM 410.040, guaranties **may be** accepted from:

- Officers of a corporation to personally guarantee the corporate liability. Form BOE ~~BT~~ 140 and financial statement should be obtained from all corporate officers of record unless it appears more desirable to accept a guaranty from the principal officer(s) and/or principal stockholder(s).
- A corporation to guarantee the liability of individuals, partnerships or other corporations. A current financial statement of the guarantor corporation and a certified copy of the minutes of the guarantor corporation authorizing the binding of said corporation must be submitted. (Some consideration, other than mere friendship, should be evident between principal and guarantor.)
- An individual to personally guarantee the liabilities of other individuals or entities (to be used in rare cases, e.g., a father to guarantee guaranty the liability of a minor child).

Personal guaranties **may not** be accepted from:

- Any entity, corporation or otherwise, to ~~guarantee~~ guaranty its own liability.

SECURITY

- b. One or more partners to ~~guarantee~~ guaranty the liability of other partner(s).

APPROVAL OF GUARANTIES

410.055

Personal guaranties will be accepted only with the approval of the ~~district~~ District administrator Administrator, ~~principal~~ Principal ~~compliance~~ Compliance ~~supervisor~~ Supervisor or ~~branch~~ Branch ~~office~~ Office ~~supervisor~~ Supervisor. A current financial statement of the proposed guarantor should be submitted for approval. If the Form ~~BT~~ BOE-140 and the financial statement are submitted simultaneously, it must be made clear to the potential guarantor that acceptance is dependent upon examination of his/her financial statement and approval by the reviewing authority.

If, during the period of a guaranty, it is determined that the guarantor is no longer suitable, appropriate security in some other form should be obtained.

LIMITATION ON AMOUNT AND EFFECTIVE PERIOD

410.060

The limitation as to the amount for which a guarantor can be held liable will be the penal sum shown on the Form BOE-140 or Form ~~BT~~ BOE-140-A, if one is filed.

The limitation as to the amount for which a guarantor who has executed an old type of Guaranty, Form BOE-140, Rev. 8 or prior, can be held liable will not exceed the maximum amount of security allowed under the law under which the guaranty was taken. The limitations of ~~Revenue and Taxation Code~~ §RTC section 6701 apply.

A guaranty becomes effective as of the date the form is signed. Although guaranties are valid until revoked in writing by the guarantor, staff must review all information provided to ensure that the personal guaranty is valid if the security is not to be released after three years and every three years thereafter. Staff should ensure that the guarantor is still willing to provide a guaranty and has adequate resources to do so. If the guarantor does not have adequate resources to provide a guaranty, staff will require security to be provided in another form. If the guarantor is no longer willing to provide a guaranty, the guarantor should be instructed to provide written notification of his or her intent to terminate the guaranty.

A guarantor may terminate his or her guaranty by notifying the Board in writing of his or her intention to terminate. The termination becomes effective thirty (30) days after its receipt by the Board.

Requests for termination, when received in the district offices should promptly be forwarded to the Headquarters Account Analysis and Control Section. Headquarters will acknowledge the taxpayer's termination by mail with a copy to the district office. Action to secure replacement security, if necessary, should be taken promptly by the district. ~~No report need be made by the district office to Headquarters Account Analysis Section.~~ The guaranty record will be deleted from the semiannual security report ~~inventory automatically through computer action, not less than one year from the effective date of cancellation, providing there are no balances or delinquencies on the account.~~

~~If, after a record has been deleted from the security inventory, a liability which occurred prior to the termination date is discovered within the ten year statutory period, the record will be restored to the inventory.~~

GUARANTIES, FORM ~~BT~~ BOE-140 - PREPARATION AND DISTRIBUTION

410.065

Form ~~BT~~ BOE-140 will be prepared in triplicate. Form BOE-487-G, Guaranty Receipt Advice, will be printed ~~prepared~~ automatically when ~~from the posting~~ the guaranty ~~screen of the on-line Security Deposit system.~~ The original of Forms BOE-487-G and ~~BT~~ BOE-140 will be ~~fastened~~ attached together and sent ~~transmitted~~ to Headquarters Account Analysis and Control Section for verification. The duplicates of Form BOE-487-G and ~~BT~~ BOE-140 are ~~is~~ the guarantor's copies.

Neither the business address of the seller nor his/her DBA will be shown on the guaranty.

Two or more Forms ~~BT~~ BOE-140 from different guarantors accepted simultaneously will carry the same "penal amount" determined to be required as maximum security to be demanded by the district.

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COMPLIANCE POLICY AND PROCEDURE MANUAL

Depending on whether the guarantor is an individual or a corporation, the appropriate box at the bottom of the Form ~~BT~~BOE-140 should be completed in full.

In accepting corporate guaranties, a certified copy of corporate minutes will be obtained showing authorization by the Board of Directors for the corporation to engage as a guarantor. If the "Witness to Signature" is not a member of the staff of the Board of Equalization, the signature of the guarantor should be acknowledged by a notary public.

The "Notice to Guarantor" section will be ~~carefully~~ brought to the attention of the potential guarantor so that he/she is fully aware of his/her obligations.

DISTRICT CONTROL

410.070

- a. **Records.** A separate guaranty file need not be kept by the district. Headquarters will maintain a record of all Forms ~~BT~~BOE-140.
- b. **Review.** Whenever the attention of a district is drawn to an account secured by personal guaranty where dishonored checks, late payments, revocation or information of financial instability are involved, a review of the guaranty should be made. This review would include ascertaining if the guarantor(s) connection with the firm remains the same and to what extent, if any, the firm's financial position may have changed. It may become necessary as a result of this review to demand security or obtain a new guarantor(s).

JUDGMENTS AGAINST GUARANTORS

410.075

~~To enforce collection from a guarantor who refuses to pay his liability voluntarily, it is necessary to obtain a judgment. This is done by the Attorney General after referral to that office by the Special Procedures Section. None of the summary procedures provided for in the various tax laws are available for use against guarantors either before or after obtaining the judgment.~~

~~The Special Procedures Section must be supplied with all pertinent information relating to the case, including the guarantor(s) present address and his current ability to pay if judgment is secured. Ownership and location of any real property is particularly important.~~

~~After a judgment has been obtained, the only action the district offices can take to collect from guarantors is to try to induce them to pay voluntarily, and to furnish information to the Attorney General regarding assets available. Summary procedures (levies etc.), cannot be used. Action to enforce collection must be taken by the Attorney General.~~

SALES AND USE TAX SPECIAL SECURITY

410.080

Under ~~Sales and Use Tax Law~~ § RTC sections (Section 6811 and 6813), security may be deposited in order to obtain a Certificate of Payment, Form BOE-471. This form, commonly known as a "clearance," relieves a successor of any potential tax liabilities incurred by a predecessor. The certificate may be issued after all amounts due, including amounts not yet ascertained, are secured to the satisfaction of the Board. This security ~~isn't~~ is not subject to the limitations contained in ~~Section~~ RTC section 6701 ~~of the Sales and Use Tax Law~~. However, the selling/purchase price of the business or stock of goods is the maximum amount of security that can be requested.

The sale of a business or stock of goods is required for security deposits to be taken under RTC sections 6811 and 6813 ~~of the Sales and Use Tax Law~~. The security for this section should be limited to cash type deposits, including Third Party deposits.

Discretion and good judgment should be used at all times when determining the amount of security required. Existing liabilities, delinquencies, file history on prior audits and payments, and person making the deposit (seller, buyer, ~~third~~ and third party) are some of the things that should be considered.

The security should only be held for a reasonable period of time sufficient to establish the amount due. It should then be applied. The difference, if any, should be immediately refunded to the person making the deposit.

SECURITY

When applied, the security will be considered available as of the date deposited.

SECURITY FORMS**415.000****LIST OF FORMS USED****415.010**

The forms listed below establish, transfer, change or terminate a security account record:

- a. Form ~~BT~~[BOE](#)-454-Assignment of Security (e.g., from predecessor to successor)
- b. Form BOE-487-C-Cash/Liquid Security Deposit Advice
- c. Form BOE-487-G-Guaranty Receipt Advice
- d. Form BOE-487-S-Surety Bond Receipt Advice
- e. Form ~~BT~~[BOE](#)-700-Request for Conversion of Security
- f. [Form BOE-1234-Form Letter to Issuer Requesting Distribution of Certificate Amount](#)

~~The forms listed below transmit security or security information from the district office to Headquarters, from Headquarters to the district office, or from the district or Headquarters to the depositor.~~

- ~~a. Form BT 737 Transmittal of Certificate of Deposit Record and Disposition of Certificate~~
- ~~b. Form GA 951 A Transmittal of Negotiable Securities~~
- ~~Form BOE-1035 Report of Security Deposit Account Checks Issued~~

PROCEDURES FOR USE OF SECURITY FORMS MISCELLANEOUS SECURITY INFORMATION

420.000

SECURITY FORMS BY TYPE OF DEPOSIT

420.005

The appropriate form is printed automatically on-line prepared when security is received from the taxpayer and posted to the system.

TYPE OF DEPOSIT	FORM USED	TAXPAYER'S RECEIPT
a. Cash Deposit	Form BOE-487-CR	GABOE-602 or MICR cash register receipt. Copy of BOE 487-C when payment made by other than cash.
b. Financial Institution	Form BOE-487-C	Copy of BOE-487-C
c. Guaranty	Form BOE-487-G	Copy of BT BOE-140
d. Surety Bond	Form BOE-487-S	Copy of BOE-487-S

Never allow taxpayers to take form BOE-487-CR to the cashier for processing. Taxpayer must not receive any portion of the Form BOE-487-CR for cash deposits until the receipt number is entered by the cashier and the form is completed.

RECEIPT OF SECURITY

420.010

The entries for receipt of security deposits are from information entered on the posting screen of the on-line Security Deposit system. When payment is cash, the ~~GABOE-602 or MICR cash register~~ receipt number must be entered on the cash maintenance screen for the that deposit in the Security Deposit system.

Each type of security must be posted in the Security Deposit system separately. Each item of security must also be posted separately.

MULTIPLE SECURITY

420.015

Two or more sales and use tax accounts, related to each other by an identical Client/Taxpayer ID (TIN) regardless of sales tax programs, are may be covered by the same item of security (e.g., John Doe has two separate sole ownership accounts. The cumulative maximum security is \$50,000. However, if John Doe is also in a partnership, the partnership could also be required to post up to \$50,000 on this account.). ~~The accounts should be related to each other by the Client/Taxpayer ID (TIN).~~

SEPARATION OF DUTIES IN DISPOSITION OF CASH DEPOSITS

420.020

Care must be taken to ensure proper separation of duties when upon disposition of cash deposits is made. ~~Section 8080 of the State Administrative Manual 8080~~ provides that no one person may authorize disbursements and also sign checks. Since the approval in the Security Deposit system constitutes authority to disburse the deposit, the same person may not sign the checks. ~~Insofar as possible, a~~ similar separation of duties applies to, savings and loan certificates and time certificates of deposit.

Releases of all security deposits are performed using the on-line Security Deposit system.

~~See chapter 4 of the Security Deposit System User Manual for detailed instructions~~

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CANCELLATIONS OF SURETY BONDS

420.045

A notice of cancellation from the surety company received by the district will be sent immediately to Headquarters Account Analysis and Control Section. Upon receipt of the notice, two copies of the notice are made. Both copies are imprinted with a rubber stamp to show the effective date of cancellation. The original is filed in the Headquarters Taxpayer Records Unit account folder, one copy is sent to the surety company as an acknowledgment of the cancellation, and one copy is sent to the district. The cancellation becomes effective thirty (30) days after its receipt by the Board. In the event that a cancellation is received by both headquarters and the district office, the earlier of the two dates will be used to determine the effective date of cancellation. If security is required by the taxpayer, the district has the responsibility to request replacement security from the taxpayer.

~~The bond record is ended 120 days from the cancellation effective date in the Security Deposit system automatically by the system program.~~

CORRECTION OF SECURITY RECORDS

420.050

Procedures to correct security records established in error vary according to the type of security. Corrected security ~~documents~~ documents will be prepared through maintenance functions of the on-line Security Deposit system. Time certificates of deposit and savings and loan certificates must be released and new security obtained in correct form. Surety bonds will be corrected by obtaining a rider to the surety bond indicating the correct information. (See CPPM ~~Subsection~~ 425.040.)

ASSIGNMENT OF SECURITY DEPOSIT**421.000****GENERAL****421.005**

Of the ~~six~~ five types of security acceptable to ensure compliance with the laws administered by the Board, only cash may be transferred by assignment between taxpayers. Time certificates of deposit and fully paid investment certificates are issued to a specific entity and are not transferable.

Surety bonds are also issued to a specific entity, but may be transferred by a rider, in which case a new Form BOE-487-S, Surety Bond Receipt Advice, is prepared. The acceptance of such a rider is not normally considered good practice since the penal sum of the bond remains at its original amount. That is, if the bond were originally \$1,000 under Account A and later transferred by rider to Account B, and a liability were developed under both accounts in excess of \$1,000 each, the surety company would be liable for only \$1,000, ~~not \$2,000, as if a new bond had been accepted for Account B.~~

PURPOSE OF ASSIGNMENTS**421.010**

The procedures outlined in this section provide for assignments of cash deposits posted as security under the Sales and Use Tax Laws where there has been a change of ownership under all the following conditions:

1. The taxpayer has transferred or is in the process of transferring the business to the purchaser.
2. All of the original security deposit is to remain as security for payment of tax by the purchaser of the business.
3. Assignment of Security Deposit, Form ~~BT~~ BOE-454, assigning the deposit to the purchaser has been executed.
4. Final audit has been determined and verified and all taxes paid.

CONDITIONS UNDER WHICH THIS PROCEDURE SHOULD NOT BE USED**421.015**

When a portion of the deposit is to be returned to the original depositor or applied to a liability of the original depositor, and the remainder transferred to the purchaser's account, the regular established procedure for refund of deposits should be used. The -transfer should then be effected by endorsement of the refund warrant by the original depositor to the Board of Equalization.

ASSIGNMENT OF SECURITY, FORM ~~BT~~ BOE-454**421.020**

Assignment of the seller's interest in a cash deposit to the purchaser of the business must be effected by completion of Form ~~BT~~ BOE-454. In no case should Form ~~BT~~ BOE-454 be prepared unless all tax has been determined and paid by the outgoing individual or partnership. The form is to be distributed as follows:

Cash Deposit

- Original - to Taxpayer Records Section for the buyer's account.
- Copy - to Taxpayer Records Section for the seller's account.
- Copy - ~~Retained~~ retained in district office for buyer's account.
- Copy - ~~To~~ to seller.
- Copy - ~~To~~ to buyer.

PREPARATION OF FORM ~~BT~~BOE-454

421.025

In the blocks at the top to the form, enter account numbers of the accounts from and to which transfer of security is being made. The balance of the information required on the form is self-explanatory.

If the deposit being transferred was originally posted under more than one account number, a separate assignment form should be prepared for each deposit.

Ordinarily, when the transferor account is a partnership, all partners should be available for signing the assignor portion of Form ~~BT~~BOE-454. Care should be exercised in all possible cases to obtain signatures of both the assignor(s) and assignee(s) or their authorized representatives, on all copies of the forms. This may be done through the use of carbon paper rather than having all copies signed individually.

When the assignor account is a partnership and all partners are not available to sign Form ~~BT~~BOE-454, the available partner(s) winding up the affairs of the partnership may sign the form, provided there is no doubt in the Board representative's mind of the remaining partner's (s') full authority to dispose of the security deposit. When doubt does exist, full particulars should be sent to the Headquarters Legal ~~Staff~~ [Division](#) requesting a decision on the legality of the remaining partnership to sign on behalf of the partnership.

SECURITY DEPOSIT RECORD, FORMS BOE-487-C

421.030

A complete set of security deposit records forms will be prepared for the assignee. The comment "Form ~~BT~~BOE-454 obtained" should be made in the comments system program when the security item is released from the seller's account and another comment made in the buyer's account. In the event an assignee has also deposited additional security, a separate posting of security deposit must be completed in the Security Deposit system for the additional security.

DEPOSIT MADE IN INSTALLMENTS

421.035

If the transferor's original deposit was made in installments, one assignment form, ~~BT~~BOE-454, may be prepared for the total deposit transferred. Each deposit will be released and transferred separately in the on-line Security Deposit system with comments.

FOR HEADQUARTERS RECORDS

421.060

Form BOE-487-C for the transferee's account should be forwarded to [Headquarters](#) Taxpayer Records [Section](#) with the assignment form.

TRANSMITTAL OF SECURITY OR SECURITY DOCUMENTS**425.000****CASH DEPOSITS - FORMS BOE-487-C****425.010**

Forms BOE-487-C are produced by posting cash or liquid deposits in the on-line Security Deposit system. Only a copy of the BOE-487-C for cash deposits is transmitted to Headquarters Cashier with the district's daily transmittal.

~~Form BOE 1035 is transmitted together with the tissue paper copies of the refund checks to Headquarters Accounting Section. If the volume of checks is not large enough to reasonably fill a transmittal, they may be held by the district for a period not to exceed one week. The final Form BOE-1035 for the month must be mailed by the district no later than four working days prior to the end of the month.~~

SURETY BONDS AND RIDERS**425.040**

Usually bonds and riders are received by the district. The Form BOE-487-S and the bond or rider ~~can~~ must be transmitted to Headquarters Account Analysis and Control Section in the regular mail. No transmittal form is necessary.

Should the bond be received directly by the Account Analysis and Control Section, Form BOE-487-S will be prepared and a copy forwarded to the taxpayer.

If the original bond is in error and needs a rider for correction, the effective date of the rider must be the same as the original effective date. All riders with corrections to the Board number, effective date or dollar amount should be sent to Account Analysis and Control Section for processing.

Riders to existing bonds where there is a change of entity should not be accepted unless the district has determined there is no existing or potential future liability on the closed-out account.

GUARANTY, FORM ~~BT~~ BOE-140 AND ENDORSEMENT TO GUARANTY, FORM ~~BT~~ BOE-140-A 425.050

Form BOE-487-G is prepared in duplicate to record receipt of a guaranty or endorsement to guaranty. The original is sent to Headquarters Account Analysis and Control Section with the guaranty (Form BOE-140) or endorsement (Form ~~BT~~ BOE-140-A) attached. No transmittal form is necessary. The copy is for the district file. Form ~~BT~~ BOE-140-A is used as a rider to a guaranty (Form ~~BT~~ BOE-140) for the purpose of increasing or reducing the amount of the guaranty.

DECREASES IN SECURITY OR PARTIAL REFUNDS**430.000****GENERAL****430.010**

Occasions may arise when investigation of an account reveals security is in excess of that required to properly secure the State's interest; or, a portion of the security is to be refunded to the depositor and the balance retained as security to cover a contingent liability.

DECREASE OF CASH DEPOSIT AMOUNT**430.020**

If a portion of a cash deposit is refunded and the balance retained, that information is entered in the retain/release screen and released on the disbursement screen of the on-line Security Deposit system.

DECREASE OF CERTIFICATE**430.030**

Reduction in the amount of time certificates and fully paid investment certificates is an expensive procedure and is not to be encouraged. However, should it become necessary, it can be accomplished by cashing the certificate, posting the proceeds in the Security Deposit system and releasing the entire amount by issuing two checks for the amount received, one for the purchase of the new security and the other to refund the balance to the taxpayer. A preferred procedure is for the taxpayer to deliver a certificate for the reduced amount to the Board. The former certificate is then immediately released to the taxpayer.

DECREASE OF SURETY BOND**430.040**

A surety bond is not refunded, but merely reduced. ~~therefore, the only documents required are a~~ The surety company must send the district a "rider" to decrease the amount of the bond. ~~from the surety company and maintenance in the Security Deposit system. A new BOE 487-G will be produced by the system.~~ The district will "date stamp" each rider showing the date it was received.

Decrease riders are approved by district offices and sent to the Account Analysis and Control Section (AACS) for processing. AACS adds an end date to the active surety bond record. The AACS posts the bond to the account again for the decreased amount. A new BOE-487-B will be produced by the system showing the new amount of the bond.

~~Districts will "date stamp" each surety bond decrease rider showing the date actually received.~~

REFUND OF CASH DEPOSITS IN DISTRICT OFFICE**435.000****GENERAL****435.005**

~~To facilitate the efficient processing and control of a substantial workload of important fiscal documents, all districts will use the same report and control form for cash deposit refunds, Form BOE-1035, Report of [Security Deposits - Cash Deposits Cleared and Special Deposit Account Checks Issued](#), ~~is automatically completed~~ [requested on-line](#).~~

District offices must maintain a permanent log identifying all returned cash deposit refund checks. The log is to be maintained by someone other than the refund clerk and include date, new mailing address and the disposition of each check. A supervisor is to review all cash deposit refund checks prior to their remailing and periodically review the log book.

REFUND OF CASH DEPOSITS - PROCEDURAL POLICIES**435.010**

Checks payable to the Board will be honored by the bank in any amount. Checks payable to depositors in excess of \$15,000 (~~Beam 2517~~) must be signed and countersigned in the district office by two authorized persons ([See Beam 2517](#)).

District offices will make refunds for so-called legal cases, such as bankruptcies, assignments and probates. Care must be taken that the check is delivered to the proper person, other than the depositor, who is authorized by the court to receive it.

RETURNED CASH DEPOSIT REFUND PROCEDURES**435.011**

When a district office receives a cash deposit refund check returned from the post office, prompt action should be taken to determine a current address for the depositor (~~see CPMG 110.000~~). Cash security deposit refunds under \$50.00 need not be investigated for a better address.

A complete report on both sides of Form ~~BT~~[BOE](#)-452, Compliance Activity Report, listing social security numbers, SEIN and/or FEIN numbers, driver license numbers, dates of birth, and the results of skip tracing efforts to locate the taxpayer should be completed. If the taxpayer is located, his or her identity should be verified by social security number or driver license before the refund check is re-mailed.

If after 60 days, attempts to locate the depositor have failed, the efforts to locate the taxpayer are to be reviewed by a district office supervisor for approval before a copy of the refund check and copy of Form ~~BT~~[BOE](#)-452 is sent to the [Special Projects Team in the Program Planning Division](#)~~Compliance Planning and Evaluation Section~~. The original refund check and a copy of the report should be forwarded to the ~~Financial Management Division~~[Headquarters](#) - Accounting Section. A copy of the refund check and the original ~~BT~~[BOE](#)-452, with any skip tracing documents, should be retained in the district office for three years.

[The Special Projects Team in the Program Planning Division](#)~~Compliance Planning and Evaluation~~ will review all returned mail reports received from the district offices and attempt to find a current address for the depositor. [The Special Projects Team in the Program Planning Division](#)~~Compliance Planning and Evaluation~~ will not investigate uncashed refund items. A memorandum will be forwarded to ~~Financial Management~~ - Accounting Section and the district office outlining the results of this investigation.

The ~~Financial Management Division~~ - [Headquarters](#) Accounting Section transfers the funds to the unclaimed trust fund. The funds will stay in the unclaimed trust fund for a period of ~~2~~[two](#) years. If the taxpayer/depositor has not claimed these funds within that time, they will then be credited to the State General Fund.

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UNCASHED CASH DEPOSIT REFUND PROCEDURES**435.012**

Whenever a refund check is issued to a taxpayer and is lost or destroyed within two years of the date of issue, a stop payment is required. It is the responsibility of the ~~Financial Management Division~~ [Headquarters](#) - Accounting Section to issue all stop payments. Requests for stop payment of a cash deposit refund check will be made in the form of an explanatory letter. Generally, the requests for stop payment are originated by the taxpayer informing the Board of loss, destruction or mutilation of the original refund check and requesting replacement. Board employees will not stop payment when it appears that the request may involve the Board in any controversy between private parties.

Each quarter, the Chief Accounting Officer will forward to the appropriate ~~district~~ [District administrator](#) [Administrator](#) a memo and two copies of those checks which remain uncashed more than six (6) months after the issue date and are greater than or equal to \$10.00. The memo will be forwarded to the districts even when there are no uncashed refund checks over six months old for that quarter. The districts are responsible for contacting the Accounting Section if neither a listing nor a memo is received. Copies of the uncashed checks will be forwarded by the Accounting Section to the [Special Projects Team in the Program Planning Division](#) ~~Compliance Planning and Evaluation Section~~ and the Taxpayer Records Section.

The district office, upon receipt of the check copies, will review the file and mail Form GA-1137 and Form STD-805-A or B to the address of record. Form STD-805-A is executed when the depositor is within the State of California. Form STD-805-B is executed when the depositor is outside California. A thirty-day follow-up should be established. All Forms STD-805 returned to the district by depositors should be sent to the ~~Financial Management Division~~ [Headquarters](#)—Accounting Section who will finalize and process the Forms STD-805 by placing a stop payment on the original check. When a replacement check is required, the Accounting Section issues an in-lieu check after a 30 day waiting period. If the GA-1137 and STD-805 are returned by the post office, the district office will attempt to locate a current address for the depositor ~~(see CPMG 110.000)~~.

A report on Form BOE-452, Compliance Activity Report, showing the district office action on each listed account should be forwarded to the ~~Financial Management Division~~ [Headquarters](#)—Accounting Section no later than 60 days after receipt of the listing. A copy of the report should also be sent to the [Special Projects Team in the Program Planning Division](#) ~~Compliance Planning and Evaluation Section~~.

PREPARATION OF CASH DEPOSIT REFUND CHECKS**435.015**

Refund checks will bear the account number as shown in the Board's records and the words "security refund" in the upper left hand corner. If the check is being sent to an escrow, the escrow number should also be typed in the upper left corner just under the words, "Security Refund". Otherwise, nNo other entries should be made in this section. Below the section "Pay to the Order of," will appear the name of the taxpayer and his/her last address, as it appears on the report from the on-line Security Deposit system. If an individual, the first name, middle initial (if any) and last name are sufficient to properly identify the taxpayer. The majority of partnerships are comprised of only two parties and there should be sufficient room on the check to include both first names and middle initials of the principals. When a situation is encountered where the number of partners is such that inclusion of the complete first names of each will result in crowding, initials only are acceptable.

a. John R. Smith

2345 First Street
Sacramento, CA 95818

b. J.R. Smith, W. Jones, F.A> Gildersleeve and P.T. Eisenhower

2345 First Street
Sacramento, CA 95818

c. The Academy Record Shoppe, Inc.

2345 First Street
Sacramento, CA 95818

d. W.T. Ball Co., Inc. and Rocklin Gravel Corp., a joint venture

SECURITY

2345 First Street
Sacramento, CA 95818

Where the taxpayer is other than an individual, partnership or corporation, it should be identified on the check as indicated in the foregoing. This requirement will allow the cashing institution (usually the bank where the bank account is maintained) to more easily identify the account. This type of refund is in the minority and the extra typing involved should be no imposition.

If the inclusion of a business name on the check is deemed necessary by the district, the taxpayer name should read:

- a. John R. Smith, dba Smith Auto Supply
- b. John R. Smith and Willie Jones, dba Smith Auto Supply

~~See Subsections 450.030, 455.010 and 754.060.~~

ENDORSEMENT OF CASH DEPOSIT REFUND CHECKS

435.020

Occasionally, recipients of cash deposit refund checks may have difficulty in cashing them because of a bank's refusal to honor their endorsement.

The ~~two~~ three circumstances most likely to arise are:

1. The cash deposit refund check is made out in the name of a deceased taxpayer and the surviving spouse appears asking for information regarding the proper procedure to be followed to cash the check. When the inquiry concerns a deceased taxpayer, compliance with State Administrative Manual 8477.32 will adequately protect the Board.
2. The cash deposit refund check is made out to individually named partners. One partner appears with the explanation that his/her other partner(s) has disappeared. When the inquiry concerns a missing partner(s), the check may be endorsed as drawn, with the remaining partner's signature as partner entrusted with dissolution under provisions of the Corporations Code §16804.
3. The cash deposit refund check is made out to a corporation. A corporate officer requests that the check be made payable to an individual officer. When the inquiry concerns a corporation, an in-lieu check can be issued to an individual officer if a notarized affidavit signed by each corporate officer is provided.

~~When the inquiry concerns a deceased taxpayer, compliance with Section 8477.32 of the State Administrative Manual will adequately protect the Board.~~

~~When the inquiry concerns a missing partner(s), the check may be endorsed as drawn, with the remaining partner's signature as partner entrusted with dissolution under provisions of Section 15035 of the Corporations Code.~~

In the few instances where the district office recommends issuance of an in-lieu check, the original refund check will be sent to the ~~Financial Management Division~~ Headquarters - Accounting Section with a request to issue an in-lieu check.

~~-(District offices are not authorized to issue in-lieu checks.)~~

DISTRICT PROCESSING OF FORM BOE-1035

435.025

- The BOE-1035-LZ, Report of Security Deposit Account Checks Issued, ~~report from the on-line Security Deposit system, after the items are released in the computer, is~~ printed on-line by ~~sent to the refund clerk who then prepares the checks from the report.~~
- The refund clerk will enter the check numbers in the Security Deposit system for that transmittal. This includes entry of spoiled (voided) checks, the check range, and the check made payable to the Board of Equalization. The BOE-1035-LZ will be printed by the system.

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COMPLIANCE POLICY AND PROCEDURE MANUAL

- Each item on a Form BOE-1035-LZ that is payable to the Board must be supported by a [payment document](#) remittance advice, either a return Form BT 401, a payment advice Form BT 424, or a copy of a billing Form BT 1212. These are sent to the district cashier with the Board check [for on-line processing](#). The cashier issues to the refund clerk one receipt [to the refund clerk reflecting](#) for the total amount payable to the Board. ~~This receipt must show the report date of the related Form BOE 1035. The original BOE-1035-LZ will be forwarded to Headquarters Accounting Section.~~ The refund clerk files the receipt with the district copy of Form BOE-1035-LZ. ~~The duplicate copy of the receipt attached to the accompanying documents is included with the district office cash transmittal sent to Headquarters. This receipt number is entered on each document in the receipt number block.~~

Districts that have cash registers may use an alternate procedure whereby a cash register receipt(s) is issued for either each document supporting the total amount payable to the Board or one receipt for the total amount payable to the Board. If separate receipts are issued, all of them will be given to the refund clerk to be filed with the district office copy of the Form BOE 1035.

The last report [for the month](#) must include the data on the last line refund check issued for that month and must be mailed by the districts no later than four working days prior to the end of the month. If it is necessary to issue another refund check during the remaining days in the month, Headquarters Accounting Section must be notified by telephone immediately and a supplemental Form BOE-1035-LZ sent to Headquarters without delay.

d. Spoiled checks are voided and the check numbers are entered in the Security Deposit system. Checks should be voided whenever an error is made in typing the taxpayer's name, amount or date. Erasures or strikeovers are not permissible.

b. The refund clerk sends the original copy of Form BOE-1035-LZ and all copies of voided checks and the tissue copies of the refund checks to Headquarters ~~Financial Management Division~~ Accounting Section. [The refund clerk preparing the Form BOE-1035-LZ and refund warrants will sign the Form BOE-1035-LZ.](#)

e. Only one Form BOE-1035-LZ need be prepared for any ~~one day~~ [one-day](#)'s batch of refund warrants covering all business taxes.

~~The refund clerk preparing the Form BOE 1035 and refund warrants will sign the Form BOE 1035.~~

DISTRICT OFFICE VERIFICATION

435.030

Verification should be made that each completed Form BOE-1035-LZ agrees with the total amount of checks prepared for the Board and each taxpayer/client.

CLOSE-OUT AUDITS AND REFUNDS OF CASH DEPOSITS

435.035

In all cases, the cash deposit refund will be completed only after the District Audit ~~Review Section~~ has [cleared any pending audits](#) ~~approved transmittal of the audit to Headquarters,~~ and the district office master file [or on-line record](#) has been thoroughly checked for any record of unpaid liabilities.

~~CERTIFICATES ON BANKS AND SAVINGS AND LOAN ASSOCIATIONS~~ NO LONGER IN EXISTENCE

~~Form time to time, banks and savings and loan associations merge, move their location, or otherwise lose their identity with respect to the information contained on the district's copy of the Form BOE 487-C. This does not usually result in any difficulty in cashing the certificate because of the district's prior knowledge of this local change.~~

However, if at any time, a district cannot locate a bank or savings and loan association whose certificate has been posted as security to a business taxes account, they may call Headquarters Account Analysis Section for the name and address of the institution that has, or assumed, responsibility for payment of the certificate.

GUIDELINES FOR REDEEMING AND/OR CONVERTING TIME DEPOSIT AND SAVINGS ACCOUNTS HELD AS SECURITY DEPOSITS

435.050

GENERAL

When a bank is sold to or merged with another bank, Board policy is to contact the surviving bank for a replacement account, new collateral, and a signed Savings Institution Acknowledgement from the second page of Form BT-598-LZ, Notice of Security Requirements.

The Board has experienced some difficulties when attempting to redeem a deposit account for cash or change an account's collateral to collateral from the surviving bank. The three most common problems encountered are: (1) the bank can not find a record of the account, (2) the bank refuses to issue a certificate or passbook from the surviving bank or (3) the bank says the account was transferred to the State Controller as required by operation of law or released to a person other than the Board. Banks and financial institutions are required to transfer funds to the State Controller in cases where the depositor cannot be found.

To help reduce the difficulties experienced when changes are necessary with the collateral held by the Board, the new security procedures listed in CPPM 410.015 were developed.

PROCEDURES

- When time deposit and passbook savings accounts are to be redeemed or converted, the collateral should be sent via first class mail. A photocopy of the collateral and cover letter to the bank should be kept in a secure place.
- When time deposit and passbook savings accounts are to be redeemed, and there may be excess funds due to the taxpayer, Form BOE-1234-LZ, Letter Requesting Conversion of Time & Savings & Loan Certificates To Cash, should accompany the original evidence of deposit sent to the savings institution. Instructions for disbursement of excess funds must be included on Form BOE-1234-LZ.
- All contacts with the bank should be in writing or followed-up with a letter. All contacts should exhibit a firm, professional tone. Do not hesitate to speak to the branch manager to resolve any difficulties.
- Always complete a Form BOE-487 as outlined in CPPM 420.005.
- When security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skiptracing resources, send the collateral with release endorsement to the bank. The cover letter should inform the bank that the Board has released its interest in the funds to the depositor/taxpayer and, if the funds will be transferred by operation of law to the State Controller at a later date, the Board should not appear as the account holder or other interest holder on the account.

CIRCUMSTANCES

1. The Bank Says It Has No Record of the Account

Active Permits and Licenses - When converting an old deposit account to a new account from a surviving bank, and the bank has no record of the account, explain to the bank that the Board of Equalization is the account holder and is presenting the original collateral for conversion and the request should be honored. If the bank continues to refuse to convert the old account to a new account or redeem for cash, return the collateral to the taxpayer with a completed form letter BOE-35 (Exhibit 1). Include Form BOE-598-LZ for the required replacement amount.

Closed-Out Permits and Licenses - When redeeming a deposit account for cash, explain to the bank that the Board of Equalization is the account holder and is presenting the original collateral for redemption and the request should be honored. If the bank continues to refuse to redeem the collateral for cash, refer the denied claim to the Special Procedures Section for an Attorney General referral.

2. The Surviving Bank Refuses to Issue a New Certificate for an Old Account

If the surviving bank retains the account numbers of the former bank but does not issue certificates, a letter from the bank that certifies those circumstances and also that the surviving bank will honor the former institution's certificate when presented for redemption is acceptable - with the required wording – in-lieu of a replacement certificate.

March-August 2001 1997

COMPLIANCE POLICY AND PROCEDURE MANUAL

Contact the ~~The~~ Special Projects Team in the Program Planning Division to obtain approval for the bank to provide a letter instead of a replacement certificate and a letter template with the required wording.

When attempting to convert a deposit account and/or replace the collateral from a surviving bank, explain the Board's policy to the bank. If the bank will not conform to our request, ask to withdraw all the funds without an early withdrawal penalty.

- If the penalty is not waived and the maturity date is within 90 days, hold the certificate until that date. At that time, contact the bank to close the account. Complete and send form letter BOE-36 (Exhibit 2), to inform the taxpayer of the circumstances and ask the taxpayer if he or she would like the cash deposit converted to a deposit account.
- If the early withdrawal penalty is waived, redeem the collateral for cash and post the amount as a cash deposit. Notify the taxpayer of the actions taken with form letter BOE-36 (Exhibit 2).
- If the penalty is not waived and the maturity date is not within 90 days, hold the certificate and set a follow-up for that date. Send the bank form letter BOE-37 (Exhibit 3). When the account reaches the maturity date, contact the bank to cash the account. Complete and send form letter BOE-36 (Exhibit 2), to inform the taxpayer of the circumstances and ask the taxpayer if he or she would like the cash deposit converted to a deposit account. Send the bank form letter BOE-37 (Exhibit 3).

3. The Bank Says the Account was Transferred to the State Controller or Released

When converting or redeeming an account, explain to the bank that the Board of Equalization is the account holder and is presenting the original collateral and the request should be honored.

- If the account is determined to have been transferred to the State Controller by operation of law, the bank should pay the Board and file a Holder's Claim for Reimbursement with the Bureau of Unclaimed Property of the State Controller's Office, (800) 992-4647, to retrieve the funds.
- If the account is determined to have been released to the taxpayer, the bank should be informed that the account holder is the Board of Equalization and without the Board's release endorsement, the bank remains liable for the funds.
- If the district office cannot collect from the taxpayer, the bank should be requested to make payment. If the bank continues to refuse to redeem the collateral for cash, refer the denied claim to the Special Procedures Section for an Attorney General referral.

4. Security Released to a Taxpayer by the Board

When collateral is released to a taxpayer and the taxpayer has difficulties with the bank when redeeming the collateral, the taxpayer will sometimes ask the Board for assistance.

- If the bank has told the taxpayer that they cannot find a record of the account, the taxpayer should be advised that the Board of Equalization has released its interest in the account to the taxpayer and the bank should honor the original collateral. Continued refusal by the bank to redeem the collateral may be a civil matter between the bank and the taxpayer.
- If the bank determines that the funds were forfeited to the State Controller when the depositor could not be located, the taxpayer should be directed to the Bureau of Unclaimed Property at the State Controller's Office, (800) 992-4647. The funds may be listed under the Board of Equalization, but the taxpayer's name and social security number may also be shown. If the State Controller locates the funds, the local Board office should provide the taxpayer with documentation needed, such as a release of interest letter, for the taxpayer to present to the State Controller when submitting a claim for the funds. If the State Controller cannot find a record of the funds, the taxpayer should be directed to the bank for settlement. Continued refusal by the bank to redeem the collateral may be a civil matter between the bank and the taxpayer.

However, if at any time, a district cannot locate a bank or savings and loan association whose certificate has been posted as security to a business taxes account, they may call Headquarters Account Analysis and Control Section for the name and address of the institution that has ~~or~~ assumed responsibility for payment of the certificate.

SECURITY

DISPOSITION OF ~~TIME CERTIFICATE OF DEPOSIT AND/OR SAVINGS AND LOAN INSURED~~ ACCOUNTS AND LIQUID SECURITY WHEN THE TAXPAYER CANNOT BE LOCATED OR THE FINANCIAL INSTITUTION FAILS

435.055

This Board has an obligation to make every effort to return a taxpayer's deposit after the account is closed out and cleared. Districts should exhaust all available sources of information in an attempt to locate the taxpayer—(see CPMG §110.000).

When security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing resources, send the collateral with the release endorsement to the bank. The cover letter should inform the bank that the Board has released its interest in the funds to the depositor/taxpayer and, if the funds are ~~escheated~~ forfeited to the State Controller at a later date, the Board should not appear as the account holder or other interest holder on the account.

Should an institution fail, then the local district will take immediate steps to notify the Headquarters Account Analysis and Control Section of the failure. The Headquarters Account Analysis and Control Section will correct their records and notify the Special Projects Team in the Program Planning Division ~~Compliance Planning and Evaluation Section~~. The Special Projects Team in the Program Planning Division ~~Compliance Planning and Evaluation Section~~ will order from the Technology Services Division a listing of accounts secured by certificates issued by the defunct institution.

Instruction to the district will follow from Headquarters as to the identity of their accounts and how to proceed to protect both the State and the depositor.

JEOPARDY DETERMINATION SECURITY**445.000****GENERAL****445.010**

Any person against whom a jeopardy determination is made who desires to file a petition for redetermination must do so within 10 days from the date of the determination. At the same time, the person must also deposit with the Board such security as may be deemed necessary. The security must be in any of the forms ~~which~~ that would be acceptable as regular security, except ~~that guaranties will not be accepted~~. If a surety bond is offered, it will not be accepted unless the effective date covers the oldest period of the liability and the surety company has knowledge of the pre-existing liability.

AMOUNT OF SECURITY**445.020**

Generally, the amount of security required should be equal to the amount of the jeopardy determination. There may be, however, situations where an amount of security less than the amount of the jeopardy will be acceptable. If acceptance of a petition for redetermination is to be recommended by the district office when the amount of security accepted is less than the amount of the jeopardy determination, the recommendation should be made by the ~~District administrator~~ Administrator or designee ~~someone to whom he has delegated this authority~~. The effective date of the security is the earlier of the date of deposit or receipt by the Board (cash).

When accepting security on jeopardy determinations, the taxpayer should be informed that interest will continue to accrue on the tax until the liability is redetermined and the security applied. The advantage of full payment over posting security should always be clearly explained to the taxpayer since ~~he might desire to make full payment~~ may ~~to~~ avoid possible interest accruals. In cases where the taxpayer has posted security in the form of a cash deposit, interest will stop accruing upon receipt. Other forms of security will not stop the accrual of interest.

PROCESSING**445.030**

Security for jeopardy determinations should be processed in the same manner as regular security deposits. Petitions, which are accompanied by security, should be forwarded immediately to the Headquarters Petition Section with a transmittal letter with information regarding the amount and form of security posted.

CLAIMS UPON SECURITY FROM OUTSIDE THE BOARD AND LIEN DEMANDS 450.000**GENERAL****450.010**

~~Section 12419.4 of the Government Code~~ section 12419.4 provides that the State has a lien, for any taxes due the State from any person or entity, upon all personal property belonging to such entity and held by the ~~State~~ State or amount owed to such entity by the State. ~~Section 12419.4 does not apply to sales~~ and use tax security deposits (~~See~~ see CPM §465.030).

~~Section 12419.4 of the Government Code~~ section 12419.4 does not apply to salaries or wages owing to officers or employees of the State. It does not permit one agency to obtain property or money held by another agency, as long as the holding agency has any rights against such properties or monies. Whenever it has been deposited with a State agency for a particular purpose, e.g., the payment of taxes, it shall not be used for any other purpose by the holding agency, until it is no longer needed for the purpose for which it was held or deposited.

A lien created by Section 12419.4 of the Government Code is enforced by means of a written demand by the creditor agency on the agency holding the property.

LIEN DEMANDS ON OTHER STATE AGENCIES**450.020**

The Headquarters Special Procedures Section is responsible for lien demands on other agencies. The Special Procedures Section prepares the demand letter directed to the other agency, and maintains a follow-up to ensure receipt of the funds or property or, if nothing is available, that a reply is received.

The demand letter shall include the amount of the delinquent liability owed to the Board, plus any additional charges which may accrue, and a statement that the amount due constitutes a lien pursuant to Section 12419.4 of the Government Code on property held, or amount owed to the taxpayer by the other agency. The other agency shall be requested to transfer the property held, or pay to the Board the amount owed, up to the stated amount of liability.

When a district office has information indicating that another State agency holds property of a person indebted to the Board, or owes an amount to such person, the Special Procedures Section will promptly be furnished with the following:

- a. Name of the agency
- b. Nature of the property or the approximate amount the agency owes to the person
- c. Reason for the other agency's indebtedness, and
- d. Approximate date on which the property will be returned or refund made.

Upon receipt of this information, the Special Procedures Section will enforce the lien by making written demand on the other agency.

LIEN DEMANDS ON THE BOARD - DISTRICT ACTION**450.030**

When lien demands are received by district offices, the taxpayer will be notified that a demand has been made under ~~Section~~ section 12419.4 of the Government Code, and ~~that the Board proposes to honor the demand subject to any prior claim the Board may find in its favor.~~ A copy of this letter will be sent to the agency making the demand and to Headquarters Special Procedures Section.

If a taxpayer disputes the amount owed to the other agency, the Board will not become involved in the controversy. The taxpayer will be advised by letter that the matter should be taken up with the other agency, and that the Board, under the Government Code, has no alternative but to honor the demand.

LIEN DEMANDS ON THE BOARD - HEADQUARTERS ACTION

450.040

Copies of the Board's refund schedules are furnished to the Department of Human Resources Development and Franchise Tax Board. If those agencies desire an offset of any of the items indicated under Section 12419.5 of the Government Code, they send their requests for offset directly to the Refunds Section.

When lien demands are received from other agencies by the Headquarters office, they will be routed to the Special Procedures Section for processing.

Upon receipt of a lien demand, either through a district office or directly from another agency, the Special Procedures Section will review the account to determine if a tax overpayment refund is pending. If such a refund is pending, the Special Procedures Section promptly notifies the Refunds Section of the lien demand. The Refunds Section will make arrangements for an offset by the State Controller.

PAYMENT OTHER THAN SECURITY TO OTHER STATE AGENCIES**455.000****ORDER OF PRIORITY OF LIENS****455.040**

All liability owed by the taxpayer for any of the tax laws administered by the Board must be cleared before meeting the demands of other State agencies. If a Board liability is cleared, and the remaining refund is not sufficient to meet all demands from other agencies, such demands will be paid in the order received.

A federal claim, Notice of Levy, served on the Board will not be recognized against a refund until all liabilities owing to all State agencies which have asserted liens are cleared.

When conflicting demands are made upon refunds, they will generally be honored in the following order:

1. Any amount owed to the Board of Equalization under any of the tax laws that it administers.
2. Liens of other State agencies acquired through the provisions of Section 12419.4 of the Government Code.
3. Federal levies.

FEDERAL CLAIM, NOTICE OF LEVY**455.050**

The Federal Notice of Levy is effective on refunds that may be due the taxpayer. If refunds, either overpayment or audit refunds, are in process, they will be identified when the copy of the Notice of Levy is sent to the Special Procedures Section. Headquarters will take action to give effect to the levy in these cases.

Levies by the Federal Government can be made by service of their Notice of Levy on district or ~~subdistrict~~ [branch](#) offices of the Board. All other services on the Board must be made on the Executive Director.

When a Notice of Levy is served by an agent of the Federal Government, or by mail, on a district or ~~subdistrict~~ [branch](#) office, it will be accepted by the ~~District administrator~~ [Administrator](#) or ~~designee~~ [designated supervisor](#). Service only will be acknowledged. No answer shall be made in writing that the Board holds anything at this point that may be subject to the levy. The agent should be advised that as soon as we are able to determine that nothing is owed to the State and that there are no prior claimants that may have priority, the levy will be honored.

A copy of the notice will be immediately transmitted to Headquarters Special Procedures Section. Inquiry should be made to determine if any amounts are owed to the other State agencies. If there is surplus refund money after paying the Board's amounts in full and any other amounts due other State agencies, a letter will be sent to the taxpayer advising him [or her](#) of the federal levy and that if neither acknowledgment nor objection to the levy is received in a specific time, the levy will be honored by the Board. Should an objection be received, full particulars will be sent to Headquarters Special Procedures Section for referral to the legal staff.

If it is acknowledged or no objection is received, any surplus money will be paid direct to the Federal Government. ~~—A copy of their levy should accompany the payment. If there are no funds available, a copy of the levy will be returned to them with a statement that no funds are available.~~

THIRD PARTY DEPOSITS**455.060**

Deposits made by a third party to obtain a use tax clearance must be kept in the name of the party placing the deposit ~~so that they do not become confused in lien demands involving the taxpayer. Such deposits are not subject to lien demands made pursuant to Section 12419.4 of the Government Code. These deposits are not available to apply to any other liability owed by the taxpayer that is not~~ [except](#) ~~—for those accounts for which a form BT-BOE-1274, Notice of Amounts Due, and/or form BT-BOE-471, Certificate of Payment, have been issued.~~

March [August 2001](#) 1997

MISCELLANEOUS**465.000****RECONCILIATION OF SECURITY****465.010**

In order to ensure the accuracy of the information on file, the security document from the district security file - time certificate of deposit, assignment of credit union shares or savings and loan certificate - will be compared to the on-line security system when the security for that account is to be applied or refunded.

In addition, yearly, each district will receive a random listing of security documents to be tested. The list will contain the account number and ownership; and the type, amount, and identification of the security document as shown on the control records.

Verification to the actual documents will be made by a person other than the normal custodian of the documents. Discrepancies will be noted on the listing by deleting incorrect data and writing in the correct information. Appropriate comments should also be made regarding items not verified because of transfer to another district or other reasons. A report certifying completion of the test by the ~~district~~ District administrator ~~Administrator~~ and the verified listing will be sent to the Chief of Field Operations within 45 days of receipt of the listing. A copy of the report and of the listing will be routed to the Internal Security and Audit Division, and a copy retained in the district office.

The Special Projects Team in the Program Planning Division ~~Compliance Planning and Evaluation Section~~ will establish criteria for the selection of the test sample and ~~disseminate~~ distribute the lists, in triplicate, to district offices. That section will monitor, review and evaluate test results. If necessary, they will notify districts if additional testing is required.

The Internal Security and Audit Division will conduct periodic test checks of the documents and use the test results as a reference. Any deficiencies noted through the audit shall later be reinvestigated to determine the effectiveness of corrective actions.

FRAUDULENT ENDORSEMENT OF BOARD CHECK**465.020**

When a payee reports that a check has not been received, a memorandum should be forwarded to the Headquarters Accounting Section providing the payee's name, current address, account number, check number, date and amount of check.

In those cases where the intended payee reports to the Board that a check has not been received, and the check is found to have been paid by the State Treasurer, the Board's ~~Financial Management Division~~ Accounting Section prepares ~~Treasury Form No. 116 (11/75), Statement Regarding Missing or Erroneous Endorsement of State Agency Checks,~~ FTB Form 435, Request for Duplicate Controller's Warrant/Stop Payment, and forwards it to the payee to be completed and notarized.

Upon receipt of the signed affidavit by the State Treasurer, the first copy of ~~the Treasury form~~ Form STC-CA-0034, Forged Endorsement Affidavit, and the original forged check will be charged back to the applicable bank. (SAM 8041.1). This action, however, is possible only within the ~~four~~ one-year period of legal negotiability (Government Code ~~Section §~~ 17403).

If more than ~~four~~ one years elapses before the payee takes action, it is not possible to charge back the item to the bank in question. That leaves the claimant with two options:

1. pursue the matter directly with the bank;
2. file a legislative claim through the Board of Control.

~~When a payee reports that a check has not been received, a memorandum should be forwarded to the Financial Management Division Accounting Section providing the payee's name, current address, account number, check number, date and amount of check.~~

OFFSETS FOR OTHER ACCOUNTS OR STATE AGENCIES**465.030**

~~Section~~ RTC section 6701 of the Revenue and Taxation Code provides that any security in the form of cash or insured savings accounts shall be held by the Board in trust to be used solely in the manner provide by- RTC sections §§6701 and 6815. Therefore, cash and savings account security deposits for sales and use tax accounts may not be applied to other tax programs administered by the Board or offset or released to other ~~state~~ State agencies claiming a lien pursuant to Government Code section 12419.4

GUIDELINES FOR RELEASING SECURITY DEPOSITS TO FINANCIAL INSTITUTIONS**465.040**

When funds are forfeited to the State Controller's Office and the Board has been unable to locate the taxpayer, the following procedures should be implemented.

When time deposit and passbook savings accounts or any other security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing tactics and resources, the bank in possession of the security should be notified. The release endorsement along with a cover letter BOE-435-4 must be sent to the bank of record informing them that the Board has released its interest in the funds to the depositor. This letter also informs the bank that if funds are forfeited to the State Controller's Office at a later date, the Board should not appear as the account holder, or other interest holder on the account.

If the bank contacts the Board after receipt of the BOE-435-4 letter, an explanation should be provided to the bank representative that the Board has been unable to locate the depositor. The Board representative should explain that security is no longer required and the Board releases its interest in the funds to the depositor. It should also be emphasized to the bank that the Board should not appear as the account holder or other interest holder on the account as stated in the BOE-435-4.

LIQUIDATION OF A SURETY COMPANY**465.050**

When the Board receives notification that a surety company is being liquidated, the Account Analysis and Control Section will provide the Special Projects Team in the Program Planning Division with a list of taxpayers with surety bonds issued by the surety company. The Special Projects Team will provide the Special Procedures Section with copies of the notice of liquidation and the list of affected accounts. The Special Projects Team will distribute the list to the field offices and the Special Taxes Department with a request that replacement security be obtained if the Board still requires security from the taxpayer.

The Special Procedures Section is responsible for making any necessary demands on the bonds or other activity with respect to collection from surety. They will send a memo asking the field offices and Special Taxes Department to provide them with a list of accounts and a BOE-200, Special Procedures Action Request, for each account for which a claim against the bond is required. The Special Procedures Section will combine all the requests and file one claim in the liquidation.

SURETY COMPANY NAME AND OWNERSHIP CHANGES**465.060**

When the name or ownership of a surety company changes, Board policy is to contact the new surety company to request a rider showing the change. The Account Analysis and Control Section will advise the Special Projects Team in the Program Planning and Evaluation Section and provide a list of affected accounts. Special Projects will distribute the list to the field offices and Special Taxes Department and request that a rider showing the change be obtained.



EXHIBIT 1

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

()
TELEPHONE ()
FAX ()

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

In Reply Refer To:

You posted a savings account in the as a security deposit for payment of taxes. We have learned that has

It is the Board of Equalization's policy to contact the new savings institution for a replacement account. We have contacted the new savings institution and they have refused to issue a replacement account. Since the savings institution has refused our request, we are returning the original with a release endorsement so you may withdraw the funds from the account.

You are still required to post security in the amount of \$. This security may be any of the types listed on the enclosed Form BOE-598-LZ, Notice of Security Requirements. This replacement security must be received by us no later than .

If you do not post the security as required, your seller's permit may be revoked. We urge your prompt cooperation so this action will not become necessary.

If you have questions, please contact me at the telephone number above.

Sincerely,

Enclosures

BOE-35 REV.1 (2-00)



EXHIBIT 2

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

()
TELEPHONE ()
FAX ()

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

In Reply Refer To:

You posted a savings account in the as a security deposit for payment of taxes. We have learned that has .

It is the Board of Equalization's policy to contact the new savings institution for a replacement account. We have contacted the new savings institution and they have refused to issue a replacement account. Since the savings institution has refused our request, we have converted the collateral to cash and have posted the amount as a cash deposit with the Board.

Please notify us if you would like this cash deposit converted to a savings account, and the name of the savings institution you prefer.

If you have questions, please contact me at the telephone number above.

Sincerely,

EXHIBIT 3



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

()
TELEPHONE ()
FAX ()

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

In Reply Refer To:

Deposit Account Number:

Depositor:

Ladies and Gentlemen:

Our records show that the Board of Equalization is the account holder for the time deposit/passbook account shown above.

If the above information is NOT correct, please contact the Board of Equalization office listed above at your earliest convenience.

If the above information is correct, this letter is to be considered activity on the account, pursuant to Code of Civil Procedure §1513, and the period of inactivity for ~~escheatment~~ proceedings [regarding the forfeiture of these funds](#) restarts from the date you received this letter.

Any questions should be directed to the undersigned at the address and telephone number listed above.

Sincerely,